

## Summaries of the replies to the public consultation launched by the Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values"<sup>1</sup>

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<sup>1</sup> The text below is a summary of the views gathered during the public consultation. The text does not outline the views of the European Commission.

Views which are quoted are sometimes shared by a variety of stakeholders. In many cases examples of categories of those stakeholders are provided, but should not be considered as exhaustive lists.

For the text of the Green Paper and information about the public consultation please see <https://ec.europa.eu/digital-agenda/public-consultations-media-issues#green-paper---preparing-for-a-fully-converged-audi>

Abbreviations:

AVMSD – Audiovisual Media Services Directive. Where not otherwise indicated Articles quoted refer to the AVMSD.

OTT – Over the top.

PSB – Public Service Broadcaster.

VOD – Video-on-demand.

**QUESTION 1: WHAT ARE THE FACTORS THAT ENABLE US COMPANIES TO ESTABLISH A SUCCESSFUL PRESENCE IN THE FRAGMENTED EU MARKET DESPITE LANGUAGE AND CULTURAL BARRIERS, WHILE MANY EU COMPANIES STRUGGLE? WHAT ARE THE FACTORS HINDERING EU COMPANIES?**

*Critique of the question, and general considerations on success*

Member States and Regulatory Authorities:

Amongst Member States authorities there is the view that in many European markets European companies are not in a position of disadvantage, but lead in the audiovisual economy. Moreover, it is unclear whether US companies manage to sell their products on the European markets easier than EU companies. European companies could also develop pan-European offers. The Single Market would not be contradictory to local cultural and linguistic specificities.

In the television market of a Member State quoted, an increasing influence of a “cultural proximity” factor in importing television content is to be noted - for instance, television series from the Scandinavian countries.

Other stakeholders:

According to a representative from the broadcasting sector, success is a relative term. Not only the economic success but also cultural and social dimensions need to be taken into account. European sports rights owners would be successful throughout Europe.

*Characteristics of the US market*

Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities note that the US market is more homogeneous than the European markets.

US companies have advantages with regard to their size and finance resources, particularly with regard to the acquisition of risk capital. They can thus benefit faster from network effects and economies of scale on the European markets.

US companies benefit from an innovative and business-friendly environment, e.g. Silicon Valley.

US film producers benefit from vertical integration and from close cooperation with device manufacturers and internet companies which efficiently use personal data of their customers for marketing purposes.

Other stakeholders:

Some stakeholders including from the broadcasting, network and digital sector share the view that the US market is more homogeneous than the European markets.

US companies are able to test their productions and recoup their investments in the big US market before launching their products in Europe.

US companies have advantages with regard to their size and finance resources, particularly the acquisition of risk capital. They can thus largely benefit from network effects and economies of scale on the European markets.

Some respondents, including representatives of organisations with a focus on consumers, note that US companies benefit from an innovative and business friendly environment, e.g. Silicon Valley. US film producers benefit from vertical integration and from close cooperation with device manufacturers and internet companies which efficiently use personal data of their customers for marketing purposes.

Various stakeholders note that the US has developed a universal culture with a worldwide reach.

US online content providers have a "natural base" in US content and thus can clear copyright easier for the major part of the catalogue demanded by consumers.

### ***Regulatory fragmentation of the Single Market***

#### Member States and Regulatory Authorities:

Some respondents among Member States authorities and Regulatory Authorities express the view, that US companies can better adapt to the fragmented market conditions because they can choose their country of establishment according to the applicable law, e.g. regarding reduced VAT rates, the liability privileges for hosting providers set out in the e-Commerce Directive, the heterogeneous implementation of the AVMSD, in particular concerning the provisions on the promotion of European works.

Another argument mentioned is that US companies manage to avoid European regulation, e.g. European data protection rules. Copyright should be harmonised, in particular the private copying exception.

#### Other stakeholders:

Cultural diversity in Europe results into a fragmented market. European film productions depend mostly on the support of national and regional public authorities. As a result, European productions are typically aimed at national or regional markets and will not be successful on wider markets. Given each country's limited scale, financial resources for European companies are limited.

Some stakeholders including from the broadcasting and network sector express the view that US companies can better adapt to the fragmented market conditions, e.g.: reduced VAT rates, the country of origin principle relating to the applicable VAT rates, the liability privileges for hosting providers set out in the e-Commerce Directive, the heterogeneous implementation of the AVMSD, in particular the provisions on the promotion of European works.

There is uncertainty as to the applicability of EU legislation to US companies. Representatives from the broadcasting sector and of organisations with a focus on consumers put forward that the obligations of the AVSMD do not apply to US companies, thus distorting competition to the detriment of European companies. Competition (mergers) control is stricter in EU. Therefore, a deeper harmonisation of European rules is needed in order to achieve less fragmented markets.

Some stakeholders including from the broadcasting, network and print sectors share the view that US companies manage to avoid European regulation, e.g. European data protection rules.

The regulatory framework should enable public and private partnerships to allow European companies compete with US companies. *Ex ante* public value tests for public service media must be applied in a proportionate way, otherwise they will stifle innovation in the EU. Antitrust regulation might hinder European companies to set up larger platforms. Some stakeholders including from the broadcasting and network sector suggest that copyright should be harmonised, in particular the private copying exception. The copyright framework should become technologically neutral. In particular, the rules which facilitate the acquisition of licences for broadcasting and for cable retransmission should apply also for internet transmissions and re-transmissions (e.g. IP-TV, catch-up). Extended collective licences could facilitate licence acquisitions for European companies. The implementation of identifiers and labelling of content with metadata will help new business models to thrive.

The authors' rights system would be less advantageous for European companies than the copyright system.

A key factor for the success of independent UK producers to export their services has been the terms of trade which imply that the production companies own the rights to programmes commissioned by broadcasts including international rights. One stakeholder suggests a study on how European producers could exploit the EU and international markets more successfully.

In contrast to the above opinions, another stakeholder from the broadcasting sector holds that a fragmented market offers access for more competitors than a homogenous market, regardless whether the market differentiates by languages, ages, gender, urban or rural audiences.

### ***Infrastructure fragmentation in the Single Market***

#### Member States and Regulatory Authorities:

A Regulatory Authority comments that European companies are enrooted in the investments they made in the infrastructures of the relevant Member States.

#### Other stakeholders:

Respondents point to strong regional differences regarding broadband and payment systems. US OTT companies do not have to invest into the European infrastructure and networks, thus externalising these costs.

**QUESTION 2: WHAT ARE THE FACTORS AFFECTING THE AVAILABILITY OF PREMIUM CONTENT? ARE THERE CURRENTLY PRACTICES RELATING TO PREMIUM CONTENT AT WHOLESALE LEVEL WHICH AFFECT MARKET ACCESS AND SUSTAINABLE BUSINESS OPERATIONS? IF SO, WHAT IS THE IMPACT ON THE CONSUMERS? IS THERE A NEED FOR REGULATORY INTERVENTION BEYOND THE APPLICATION OF EXISTING COMPETITION RULES?**

*General considerations on the notion of "premium content"*

Other stakeholders:

According to respondents among film and TV producers and distributors, the European Commission should not only consider issues regarding access to so-called premium content, but also to content that is commercially less attractive. Another stakeholder expresses the view that European premium content has limited audience, except for UK-produced content.

*Views stressing problems regarding the availability of premium content*

Member States and Regulatory Authorities:

It is argued that it should be easy for consumers to switch between different media platforms.

Some respondents among Member States authorities and Regulatory Authorities point out that exclusivity and holdback clauses (contractual arrangements between individual broadcasters and right holders on the holding back of premium content during TV exploitation) might hamper the access to premium content.

Others comment that there is an imbalance between stronger international companies and smaller, more nationally-oriented players. Stronger competition for indigenous channels has led to a reduction in advertising revenues. Any significant reduction in the number or reach of indigenous services is a concern from a diversity and plurality perspective. Competition concerns can arise in relation to the availability of premium content. Such premium content rights are typically awarded on an exclusive basis. Where these rights are the key-drivers of pay TV subscriptions, this can lead to an enduring competition problem where sought-after content is not distributed widely, limiting consumer choice, distorting downstream competition, e.g. in platform choice, and inhibiting innovation.

Other stakeholders:

The comment is made that absolute territoriality might be contrary to the EU principles of competition law and free movement of goods and services. Some respondents including from among the network and the digital sector put forward that exclusivity, windows, fixing of minimum prices and holdback clauses hamper the access to premium content. Current window regulation prevents complementary first window platforms to emerge. The growing practice of holdback clauses is currently not regulated.

In addition, content financing obligations can also hamper the development of VOD services. Premium content is almost completely held by Hollywood majors. There is the

risk that vertically integrated companies favour platforms for the distribution of content. Other stakeholders point out that the findability of third party content must be ensured. The increasing licence costs for premium content result into a limited access as premium content is available more and more on Pay-TV platforms.

A respondent from the broadcasting sector notes that it should be easy for consumers to switch between different media platforms. Another one highlights that the availability of content should depend particularly on its social importance, not on the market shares and financial resources of the service provider.

According to a network operator, any television operator or content owner holding premium content must allow network operators interested to transmit the program to enter into negotiation on equivalent conditions of the licensee. In line with the principle of media pluralism, broadcasting organisations must be prevented from exploiting their position of power and hampering network operators from offering this content to the end users.

Some representatives from the broadcasting sector comment that pay-TV operators as well as cable and telecom companies offering audiovisual content can easier afford premium content as they are in a direct payment relationship with the customer.

Public service broadcasters are given significant public subsidy in the form of preferential positioning on platform interfaces, benefitting from must-carry status and given spectrum. According to a network operator, content produced with direct or indirect public subsidies should be made available to all distribution platforms on fair and non-discriminatory terms. Some respondents from the broadcasting and digital sector express the view that private broadcasters have to face competition of public service broadcasters regarding the acquisition of sports and film rights.

### ***Proposed remedies***

#### *Competition law:*

##### Member States and Regulatory Authorities:

Some Regulatory Authorities suggest that the EU should make proposals for *ex ante* regulation aimed at harmonising the competition within the internal market, similar to Article 5 Access Directive. *Ex ante* competition powers should apply not only to linear broadcast channels, but also on-demand services, which are increasingly competing with traditional linear broadcast services, in a similar way, in which the AVSMD addresses on-demand programme services for content standards. Another respondent proposes regulatory intervention by establishing a cost ratio per content (price regulation).

##### Other stakeholders:

Some respondents point out that the competition authorities should acknowledge the rapid changes in the media sector. EU policy should ensure a level playing field between traditional actors in the audiovisual sector and new entrants.

The EU should evaluate the proper balance of the use of exclusive licensing, especially in combination with other factors, such as market dominance in the value chain.

Another proposal is that the regulator should have *ex ante* powers to address competition problems across the whole of the communications and media sectors, as well as linear

and non-linear content. The EU should make proposals for *ex ante* regulation in order to harmonise the competition within the internal market.

An entity with focus on consumers suggests that *ex post* competition rules are not sufficient to protect net neutrality.

According to a network operator, regulators could have competences over competition rules and produce a report on the state of competition on the market.

#### *Findability, must-carry, must-offer, must-deliver:*

Representatives from the print and publishing sector suggest that EU policy should focus on ensuring fairness in the findability of content and prevent internet platforms and aggregators to discriminate against third party services.

A respondent from the broadcasting sector proposes must-offer and must-deliver obligations for manufacturers and aggregators, particularly regarding the integrity of content bouquets. Must-offer and must-deliver obligations should particularly take into account new technologies, e.g. gesture interfaces and platforms, as well as social networks.

A network operator concurs that a general provision on must-offer obligations should be foreseen, however, at present, a European regulatory framework regarding market concentration and/or the preservation of diversity in the audiovisual sector appears premature, taking into consideration the still mostly nationally-fragmented media markets.

According to a respondent from the digital sector rules on compensation have to pay off for must-carry regulation.

#### *Other (AVMSD, copyright):*

##### Member States and Regulatory Authorities:

According to some respondents among Member States authorities and Regulatory Authorities, the availability of premium content could be improved by a legal framework enabling multi-territorial licensing.

##### Other stakeholders:

Some respondents from the broadcasting sector suggest that Article 14 AVMSD should be technologically neutral. This provision allows for mandatory free-to-air broadcasting of major events. The major events should be freely accessible on all platforms, including mobile. Article 15 AVMSD should be technologically neutral and possibly be extended. In particular, short extracts should be allowed in entertainment broadcasts.

Another suggestion is that pan-EU licensing should be facilitated through legislative reform, and industry-led initiatives should also be noted. There should be competition between collecting societies and multi-territory, multi-repertoire licences should be introduced.

In order to preserve access to independent films, independent producers should retain their rights and licence directly.

## *Views stressing advantages of the status quo/not identifying problems*

### Member States and Regulatory Authorities:

According to some Member States, there do not seem to be problems regarding access to premium content. At this stage, there would not be a need for *ex ante* competition regulation.

### Other stakeholders:

According to some representatives from the broadcasting and sport sector, the transaction of film and sports rights based on territoriality and exclusivity does work and has been in principle recognised by the EU Commission.

The emergence of OTT on demand services alongside traditional platforms has increased competition. Content owners must be free to determine how and on what terms to exploit their content. Assessments carried out by UK regulators regarding access to premium content did not result in new regulation.

There is no need for regulatory intervention to stimulate the availability of content across platforms beyond the application of existing competition rules. The telecoms sector and the media sector should not be subject to the same or to a new utility type *ex ante* approach.

Regulation imposing pan-European licensing could lead to a situation where only big (often non-European) companies would be able to acquire licences.

Other stakeholders point out that the exploitation windows are necessary to ensure the financing of films in Europe. Particularly, the theatrical window contributes to the success of a movie in the subsequent windows.

The availability of premium content is under the responsibility of the service and content providers who decide which content is made available and in which countries, e.g. by geo-blocking.

### **QUESTION 3: ARE THERE OBSTACLES WHICH REQUIRE REGULATORY ACTION ON ACCESS TO PLATFORMS?**

#### ***General considerations on the notion of "platform"***

##### Member States and Regulatory Authorities

Some Member States authorities and Regulatory Authorities conceive "access to platforms" as covering access to copyright protected works only. However, for many respondents among Member States authorities and Regulatory Authorities the meaning of "access to platform" should be conceived broadly and covers at least the platforms access currently regulated under the EU-framework for electronic communications. One Member State notes the need to clarify the meaning of "platform".

##### Other stakeholders:

A number of submissions discuss under the notion of "access to platforms" access to copyright protected works. For many respondents the meaning of access to a "platform" is based on the telecom notion of an electronic network, i.e., the right of access to a platform means the right to have electronic signals to be transmitted and access to use of functionalities (such as multiplexing) to a network transmitting electronic signals (telecoms network) and associated facilities (EPGs, APIs). The notion of platform is also used to comprise both, the content and the transmission function of a platform, in particular where the submissions provide input on regulating the design and information provided on "platforms" of internet access providers (IAPs) and search engines. Some submissions comment on net neutrality.

#### ***Views stressing the need to enlarge the regulation of access to (telecommunications) platforms***

##### Member States and Regulatory Authorities:

Although a number of Member States authorities and Regulatory Authorities asks the Commission to study the issue of a regulatory change for access to platforms (see next point), only one submission supports a direct widening of the scope of regulation of access platforms. This specifically-detailed view in favour of enlarging the access regulation favours an extension of the *ex ante* regulation now applicable under the telecoms framework (i.e. imposition of remedies based on a finding of dominance) to all distributors and content providers. This would involve defining markets, to assess market power and to impose remedies in market(s) such as for programming services, for acquisition of rights for recent films and markets covering different levels in value chain for distribution services and pay TV. The objective at the basis of this proposal for widening regulation is to overcome bottlenecks due to dominance (market power) in defined markets.

##### Other stakeholders:

Some stakeholders from the broadcasting sector believe that there is a need to introduce regulation imposing an access obligation on all delivery platforms (transmission

network). One respondent stresses that network operators should not be able to limit access to content and that this would imply regulating the user's rights of access to platforms. Another respondent supports the imposition of a multicast obligation.

### ***Recommendation to study the need to enlarge regulation of access to platforms***

Many Member States authorities and Regulatory Authorities ask the Commission to further examine the need for widening the scope of regulation for access to platforms. They stress that introducing further regulation is considered as a possible outcome of an examination while the need for such an extension of regulation would still have to be demonstrated.

One Member State believes that an extension of regulation to overcome restrictions on access due to new gatekeepers' roles might be necessary. Most of the submissions do not, however, further elaborate on the reasons for a widening of the scope of regulation. Arguably, on the one hand, the aim could be overcoming the restrictions of end-users on access to content as a result of the creation of gate-keepers due to technical choices (those of manufacturers to use certain standards, those of telecom operators choosing prominence and content).

This objective is obviously at the basis of the proposal for and examination to harmonise standardisation for cross-platform use.

### ***Views stressing the need to remove/reduce regulation of access to (telecommunications) platforms, including the need to study the issue***

#### Member States and Regulatory Authorities:

None of the submissions of the Member States authorities and Regulatory Authorities calls for removal or reduction of existing regulation for access to platforms.

#### Other stakeholders:

Some stakeholders from among network operators and the digital sector address the issue of reducing regulation. One calls for studying the need to reduce regulation. Another suggests that reducing regulation may ensure that future added value in the media sector is fairly distributed among all actors in the industry. One stresses that the emergence of platform competition will render regulation ensuring access to platforms obsolete.

### ***Views indicating lack of need to expand access regulation***

#### Member States and Regulatory Authorities:

A number of Member States authorities and Regulatory Authorities are opposed to any change. Some indicate that for now they are not able to formulate a position given the current status of discussions at a national level. Others simply do not take position.

#### Other stakeholders:

A number of associations do not see the need for regulatory changes. There is no need to modify regulation as this would anyway intervene too late. It is not possible to overcome

the bottleneck situations by regulating equipment because the bottlenecks are created at services level.

### ***Views on possible obstacles relating to copyright/licensing***

#### Member States and Regulatory Authorities:

Territorial licensing is an obstacle and the availability of premium content could be improved by a legal framework enabling multi-territorial licensing.

#### Other stakeholders:

Pan-EU licensing should be facilitated through legislative reform, and industry-led initiatives should also be noted. There should be competition among collecting societies. Multi-territorial, multi-repertoire licences should be introduced.

Barriers due to additional licensing costs result also from the need to adapt audiovisual works for the consumption of disabled persons. Furthermore, the need for subtitling/dubbing represents an obstacle for the transnational circulation of European audiovisual works. Incentives for producing subtitling and dubbing could help increasing the availability of European content online.

In addition, the EU copyright framework remains technologically specific. For instance, the current definition of broadcasting does not appear appropriate in the online environment.

In order to preserve the access to independent films, independent producers should retain their rights and licence directly.

Regulation imposing pan-European licensing could lead to a situation where only big (often non-European) companies would be able to acquire licences. The benefits of territorial exploitation should be preserved to ensure access to content. The systematic use of metadata and identifiers could contribute making licensing more efficient.

### ***Further issues raised by the respondent***

#### Member States and Regulatory Authorities:

A Regulatory Authority points out that, even if the adaptations of the regulatory framework were to be done at national level, the role at EU-level would consist in enabling MS to adapt their national frameworks.

One submission stresses the need to consider widening and specifying the powers of the regulatory authority in a given Member State with regard to promotion of competition via ex ante regulation in media markets. As a threshold for *ex ante* intervention the three criteria test – similar to the test at the basis of the *ex ante* regulation in the telecoms sector - should be taken into consideration. The argument of stakeholders that the different ways to regulate telecoms markets and media markets (here *ex ante* regulation- there only competition law based *ex post* intervention) might create distortions of competition in markets comprising bundled services, is outlined, however without endorsing/rejecting this argument.

Other stakeholders:

One stakeholder asks for a more flexible application of antitrust to address the bargaining power of American companies.

Another submission calls for removal of restrictions at EU-level for public service broadcasters to compete cross-border.

Another suggestion is to impose a diversity obligation in order to promote creativity of SMEs.

**QUESTION 4: DO THE CURRENT AVMSD REQUIREMENTS PROVIDE THE BEST WAY TO PROMOTE CREATION, DISTRIBUTION, AVAILABILITY AND MARKET APPEAL OF EUROPEAN WORKS?**

*Opinions expressed regarding the current measures*

Member States and Regulatory Authorities:

There is the view that the provisions of the AVMSD regarding the promotion of European works are in general adequate.

Many respondents among Member States authorities and Regulatory Authorities stress that no stricter measures should be introduced. The current provisions provide for a fair balance between the competing interests in this area. The online market and new business models are still at the beginning of their development, thus there should not be stricter requirements imposed, regarding neither share of catalogue nor prominence tools. The imposition of stricter requirements on operators based in the EU may lead to the migration of such services outside the EU.

Others plead that the regulation may be adequate for linear services but is not fit for the online environment, thus adjustments should be done in that regard.

Many have general doubts about the effectiveness of the measures, especially regarding share of catalogue/programming and are in favour of a revision in that regard.

Other stakeholders:

According to some respondents including from the broadcasting sector and some producers, the provisions of the AVMSD are in general adequate and no further regulatory action is required.

No stricter rules should be imposed.

No additional regulation should be introduced that runs contrary to consumer preferences e.g. in the form of share of programming/catalogue. No intervention is needed at European level apart from promoting good practices and contributing to increased access to diverse offer.

Other representatives of producers comment that the measures are not strong enough and too voluntary. They need to be strengthened.

Another point of view is that measures are adequate for linear services but inadequate for non-linear services, because of convergence. The different rules for linear and non-linear services – and the following different rules – are increasingly untenable in the new converged environment.

Some respondents including from the broadcasting and digital sector consider that rules should be revised/reviewed as current rules are in general inadequate, especially regarding the share of catalogue.

## *Share in the catalogue:*

### *Opinions expressed in favour of a share in the programme/catalogue*

#### Member States and Regulatory Authorities:

The view can be found that share in the catalogue are also justified regarding online services as consumer choices can only be made on the basis of what is available in the catalogue.

#### Other stakeholders:

Some stakeholders are in favour of a share in the catalogue. They should be kept in some way as they encourage domestic languages to be present on air, which for many of Europe's smaller countries can be an important policy goal. Some representatives of broadcasters argue that share of programming / catalogue may be useful but compliance with them does not result from the requirements of the AVMSD but is rather the result of PSB requirements. The mandatory percentage requirements established by the AVMSD to broadcast European and independent works are a signal to broadcasters of the importance of investing in European content and can help stimulate the volume of domestically produced content. However, it is not clear whether they are the only way to promote the creation, distribution, availability and market appeal of European works in the converged era.

### *Opinions expressed against a share in the programming/catalogue*

#### Member States and Regulatory Authorities:

Many express doubts about the effectiveness of a share in the programming/catalogue both regarding linear and non-linear services, in particular as share in the programming/catalogue is filled with national productions, and does not reach the objective of cross-border circulation of European works. This could be tackled by introducing a sub-share of programming/catalogue for non-national European works.

While a share in the programming/catalogue may safeguard the creation and distribution of European works, this does not ensure their attractiveness in the market.

Some also argue that share of programming/catalogue is affecting editorial freedom. Rules on share of programming/catalogue should be rethought because of convergence as they are not effective in the online environment. A large proportion of European works in a VOD catalogue does not say anything about actual consumption.

Even the requirements on share of programming regarding linear broadcasting (Art. 16 and 17) should be removed. A share in the programming hinders the creation and development of specialized, niche television programmes, for which there is no suitable European repertoire.

#### Other stakeholders:

Representatives from various sectors including broadcasting, digital and network operators, consider a share in the programming/catalogue in general as inefficient and

must to be revised. A share in the programming/catalogue is usually achieved by national productions, so there is little effect on the circulation of European works across borders. The provisions have not brought the expected results and achieve rather the opposite effect, making European production less attractive.

A share in the programming/catalogue applicable for linear and non-linear services is antiquated and potentially damaging as this overlooks the driving role of consumers in the new environment, where they are in a much stronger position to choose content, including how much local content they want.

Figures show that, regarding on-demand services, consumption does not increase with availability. A share in the programming/catalogue is not suitable and adequate in the new environment of convergence. In addition, a share in the programming/catalogue can be counterproductive as this may prevent companies from introducing new and innovative business models.

A share in the programming/catalogue does not help to achieve quality of production, market appeal and consumer attractiveness. Such system may lead to the production of cheap content. A share in the programming/catalogue does not help European works to become real competitors against US productions.

A share in the programming/catalogue interferes in editorial freedom and risks to lead to the dissemination of content that has little audience appeal and will ultimately result in a loss of audience. A share in the programming/catalogue limits the freedom of choice of the viewer and limits the supply.

Some respondents including from the broadcasting sector consider that compliance with a share in the programming/catalogue is not a consequence of the regulation but is based rather on consumer demand. When companies take the decision to invest in original content, they invest on the basis of consumer demand and a prospect of a successful return on investment. The production and distribution of European works should rely more on market force and competition to promote European works, including the promotion of new digital content.

### ***Prominence, promotion and marketing***

#### ***Opinions in favour of using prominence/promotion/marketing requirements***

##### **Member States and Regulatory Authorities:**

European policies should not respond to convergence by protecting national markets, rather they should focus on promoting the marketing and distribution of non-national works in other Member States. Measures to give prominence in catalogues can be better to promote the creation, distribution, availability and attractiveness of such works. Prominence may be the best answer among the options proposed by the Directive, as it is more efficient than mechanically imposed shares in the programming/catalogue. Promotion/prominence measures are more suited for online services than a share in the catalogue.

In abundant supply, prominence/promotion measures influence the choice of the public much more than an obligatory share in the catalogue. Also, such measures have only a limited effect on editorial freedom in contrast to a share in the programming/catalogue. For example, freedom in the composition of their catalogue allows VOD providers to

promote blockbusters. They do so in order to build a critical mass of users as a first step. Ideally, they can do this without having to worry about an obligation to acquire certain exploitation rights. They would not acquire those rights for commercial reasons, but only to respect the obligations regarding a certain share in the catalogue.

Other submissions suggest that a share in the programming/catalogue should be complemented by appropriate rules regarding promotion.

Other Stakeholders:

The focus should be more on promotion than other measures. In the new environment, the ability to find and promote particular types of works is crucial. It is essential that the discoverability of works is guaranteed. A share in the programming/catalogue and prominence measures should be combined.

***Opinions expressed against using prominence requirements***

Member States and Regulatory Authorities:

Prominence requirements go against the entrepreneurial freedom.

Other stakeholders:

[No explicit opposition expressed by other stakeholders]

***Financial contributions***

***Opinions in favour of financial contributions***

Member States and Regulatory Authorities:

Financial contributions/reinvestment in the production of new works should be foreseen at European level. To preserve cultural diversity such financing systems should be however set up by the Member States, through a contribution system based on the total revenue generated in the domestic market (including both linear and non-linear services and including those generated by the commercialization of such services by foreign operators), allowing each country to set up its own film production policy.

One Regulatory Authority notes difficulties in the application of the legislation on-demand regarding financial contributions. However, it maintains the position that media service providers should be obliged to be involved in the promotion and financing of European creation. This should be done through legally-binding instruments if they reach a certain turnover, in order not to stifle these new services. There should be an obligation imposed on all audiovisual media service providers to allocate a certain share of their income to purchase broadcasting rights or to broadcast works produced by independent European producers.

Other stakeholders:

Some stakeholders are in favour of such financial obligations.

## *Opinions expressed against financial contributions*

### Member States and Regulatory Authorities

[No opinions expressed against]

### Other stakeholders:

Some stakeholders express reservations, especially regarding extending such obligations to new players like cable operators, devices or to players established outside the EU (see more ample information on that in the section below). Support should not be made by collecting money from "new-comers" and sharing it with the content creator.

## *The lack of a homogenous implementation of Art. 13 in MS*

### *Flagging this as a problem that should be addressed*

### Member States and Regulatory Authorities:

Some respondents among Member States authorities and Regulatory Authorities comment that the uneven implementation of Article 13 by Member States creates important asymmetries. Such obligations should be harmonised at European level.

### Other Stakeholders:

Many stakeholders point to the problem of the uneven implementation of Article 13 in Member States and the resulting different requirements. A respondent with focus on consumers suggests that the Commission should closely monitor the implementation and provide guidelines to Member States regarding the specificities of Article 13. Some respondents from among the digital sector and network operators propose that a debate should be launched on whether this wide discretion of Member States should be eliminated. Harmonisation of these rules at European level is necessary to avoid discrimination between service providers on the basis of the territory where they are established, to ensure a fair competition in the market and to avoid forum shopping. A maximalist approach taken by some Member States in the implementation should not become the future EU norm.

Indicating that the flexible rules should be maintained and pleading against more harmonisation:

### Member States and Regulatory Authorities:

The current flexible rules regarding online that allow each Member State to address the issue in the adequate manner constitute the best way to promote European works.

### Other stakeholders:

Flexible regulation giving sufficient leeway for Member States to regulate requirements is to be welcomed. The flexibility of Member States to determine the appropriate method

to implement Article 13 is essential, given the ongoing rapid development of the market for these services and the variety of business models that are currently being explored in the market place.

***Competitive disadvantage vis-à-vis players established outside the EU***

***Such competitive disadvantage should be resolved by extending (financial) obligations to players established outside the EU***

Member States and Regulatory Authorities:

Some replies from Member States authorities and regulatory authorities point to the problem that players established outside the EU are not subject to any obligations regarding the promotion/financing of European works. This creates a considerable problem in financing new productions. Financial obligations (contribution to film support schemes) should be also imposed to these players, even by a partial derogation from the country of origin principle. Imposing such obligation to players established outside the EU should be at least discussed at European level - cf. questions 5 and 11.

Other Stakeholders:

Many Stakeholders point to the fact that there is a considerable competitive disadvantage of EU players compared to players established outside the EU because of the different rules applicable to them regarding the promotion of European works.

Actors established outside the EU should also be involved in financing content. The Directive should be revised – a country of destination principle introduced – to address this issue.

***The competitive disadvantage should be resolved by other means/call for a direct or indirect loosening of the rules applicable to players established in the EU***

Member States and Regulatory Authorities:

Establishing stricter requirements regarding the promotion of European works risks to create a further competitive disadvantage for EU-based companies and might lead such services to migrate outside the EU.

Other Stakeholders:

The Commission should look for other ways to promote European works based more on market forces and competition (lighten the obligations) and rethink the policy.

A more competitive environment is needed in the EU. Too strict obligations represent a disincentive to offer services/make content available in the EU. Rather than encouraging the creation, dissemination and availability of local content, such rules push away providers who would have otherwise introduced new distribution channels in a country. The latter would represent a new revenue source for content creation and would open new avenues for consumers to access that content.

## ***Extending obligations to new players***

### ***In favour:***

#### Member States and Regulatory Authorities:

The scope of the Directive should be widened, as it does not cover the distributors of audiovisual services, while they should be also involved in financing creation of new content.

#### Other stakeholders:

Not all stakeholders in the value chain providing services / content to European citizens are subject to the same obligations (OTTs, catch-up services etc.). Same rules should apply regarding share of programming/catalogue and financing to new platforms and traditional players to eliminate unfair competitive advantage of new platforms by comparison to the established European broadcasters.

### ***Against:***

#### Member States and Regulatory Authorities:

[No such explicit mentioning]

#### Other stakeholders:

The imposition of obligations of any kind should be limited to operators/providers that are directly involved in the exploitation of audiovisual works, but not on cable operators. No financial obligations/taxes should be imposed on device manufacturers/devices.

## ***Other ways proposed to promote European works***

#### Member States and Regulatory Authorities:

Other tools seen as efficient regarding promoting European works: tax incentives subsidies, easier access to financing i.e. loans.

The production of new television formats and audiovisual works more specifically adapted to non-linear exploitation should be encouraged and supported through aid mechanisms.

The Creative Europe Programme and similar subsidies at European level are important and should be further developed.

More emphasis should be put on co-productions and joint European projects.

#### Other stakeholders:

Other methods can be more efficient in promoting European works than the regulatory approach: financial incentives and tax aid measures, better access to financing, support of the development of new business models, branding of European works, creating supported platforms (e.g. national broadcasters or cultural institutions) with easy access for the content owner and the consumer.

Funding is of key importance. Special funding should be provided for: marketing measures, initiatives to support distribution within other countries, subtitling and dubbing, Public Service Broadcasting, marketing and distribution tools for online platforms, European TV series or co-productions.

An increased importance of co-productions (sharing risks, higher budgets which can contribute to more appeal at global level) is noted.

Some highlight the importance of the Creative Europe Programme and similar European initiatives.

### ***Independent productions***

#### Member States and Regulatory Authorities:

The rules regarding independent productions are not satisfactory as the Directive does not clearly lay down the criteria of producer's independence.

#### Other stakeholders:

The requirements regarding independent productions laid down for linear broadcasting could also be imposed to online services.

The definition of independent producers is not clear enough in the Directive so it is easy to circumvent the rules.

Flexibility in this regard is good as it enables each Member State to determine which definition best suits the audiovisual market in their country.

### ***Monitoring difficulties/Lack of sufficient enforcement***

#### Member States and Regulatory Authorities:

There are deficiencies regarding monitoring as the majority of MS relies on the data supplied by the online operators without any further control of the data.

The report regarding Article 13 is drawn up only every 4 years in contrast to linear services, where the reporting period is 2 years.

Reporting obligations constitute a heavy administrative burden for media operators. Reporting obligations should not become a disproportionate burden to media service providers and regulatory authorities should look for ways to reduce these requirements. Smaller online operators (with fewer financial capacities) should be freed from this burden, as it is the case for linear services on the basis of the market share (0.3%).

#### Other Stakeholders:

Regulatory measures for the promotion of European works online have proved to be difficult to implement and control.

Reporting and calculating a share in the programming/catalogue is a significant burden for broadcasters; monitoring could be done by the regulator on a daily or weekly basis, without relying on reporting from broadcasters.

**QUESTION 5: HOW WILL CONVERGENCE AND CHANGING CONSUMER BEHAVIOUR INFLUENCE THE CURRENT SYSTEM OF CONTENT FINANCING? HOW ARE DIFFERENT ACTORS IN THE NEW VALUE CHAIN CONTRIBUTING TO FINANCING?**

*Content financing*

Member States and Regulatory Authorities:

Online platforms and services open new avenues to finance/monetise content, but are not at this stage replacing the traditional sources of financing, such as broadcasters.

A Member State points out that the traditional windowing approach is coming under pressure. Another one notes that the cost of content produced specifically for the Internet is lower compared to the classical professional content such as films or TV series. New ways of accessing content have reduced the willingness to pay for content.

Some respondents among Member States authorities and Regulatory Authorities argue that traditional sources of financing (advertising, state support) are diminishing, while new sources are not yet filling the gap, particularly because competition in the advertising market has risen.

A significant part of the investment necessary for content distribution and hence the whole audiovisual sector is done by network operators. Conversely network operators also benefit from the content production since the content makes Internet access more attractive to consumers.

Other stakeholders:

Several stakeholders including from the digital sector and network operators express the view that online platforms and services open new avenues to monetise, while the importance of some traditional sources of financing – e.g. DVD revenues, investment by broadcasters - is decreasing or is likely to decrease. VOD services with a pan-European focus, capable to finance creation of original content will further emerge in the future. Some of the current financing systems – e.g. private copying levies – are becoming obsolete and no longer reflect the real use of the content by consumers. PSB licence fees are becoming less effective as means of financial support.

A representative of consumer interests argues that the traditional windowing approach hampers the development of new digital distribution platforms and is detrimental to low-budget works.

Funding models will not change drastically. Several stakeholders including from the broadcasting sector and producers argue that new players do not (yet) provide (significant) financial support for content production and generally do not invest into original content. Netflix's growing investment in original content presents similarities to the history of pay-tv operators; new players invest in local content which can be exploited globally. Investment from both old and new players has the potential to grow. Some representatives of broadcasters point out that investment in national/local content remains important.

Co-productions/co-financing is appropriate to achieve economies of scale for European players.

The possibility of blocking advertising online is a threat to the financing of press content on the Internet. Some representatives of the print and publishing sector express the view that public service broadcasters offering online articles distort competition to the detriment of press publishers.

While some argue that the readiness of consumers to pay for online content is changing only slowly, other put forward that consumers are generally ready to pay for content.

There are examples of content produced for online distribution, which proves to be successful and is then broadcasted on linear TV.

### ***Proposed measures***

#### ***Extension of financing mechanisms to new players***

##### Member States and Regulatory Authorities:

Several Member States authorities and Regulatory Authorities express the view that current public-interest-financing mechanisms, such as film support schemes, should be extended to online service providers, or at least, this option should be discussed at European level.

One of the options could be a device-independent levy to support public service broadcasting.

##### Other stakeholders:

It is suggested that funding obligations on telecommunication operators through specific and arbitrary taxes should be removed. Any financing-related public intervention should be technology and platform neutral, should avoid market distortions as far as possible and should take into account consumer needs and preferences.

Current public interest financing mechanisms, such as film support schemes, should be extended to online service providers. However, online service providers without editorial responsibility should not be obliged to contribute to such mechanisms.

Some representatives of network operators comment that telecom operators, in contrast to OTT players, invest in the networks and contribute to content financing through the taxes they pay. Therefore, OTT players, but not consumers, should also participate somehow in the costs for investing in networks.

Financial contributions from on-demand services should consist in the obligation to invest a share of the turnover in the production and rights acquisition of European works and/or by contributing to national film and audiovisual funds.

Broadcasters and European audiovisual media service providers should be privileged with regard to referencing and findability since they contribute to content financing, in contrast to new players.

Commercial financing resources need to be complemented by collective schemes, e.g. media levies, cultural flat rates and financing through foundations.

Broadcasters which target a cross border audience, but which do not invest in local content should be subject to a tax to the benefit of public service broadcasters.

License fees collected for public service broadcasters should be used to finance independent Internet projects.

## ***Extension of AVMSD obligations to OTT***

### Other stakeholders:

According to some stakeholders, the AVMSD disincentives content production. There should be a level playing field between communication and media markets. Online platforms should be subject to the same regulatory constraints as traditional broadcasters, e.g. regarding shares in programming/catalogue.

## ***Change window system***

### Other stakeholders:

Some representatives of network operators and the digital sector express the view that "day and data" release patterns might prove more beneficial for the European audiovisual-market than the traditional system based on exploitation windows. Windows should be harmonised in the EU. Commercial market forces should drive the change in the content financing system, not legislation. Producers of European works could be forced to release their title through VOD if they do not manage to arrange theatrical distribution within a specific timeframe.

## ***No change***

### Member States and Regulatory Authorities:

The media environment is changing rapidly; policy intervention would be premature at this stage. Considerations to make the window system more flexible would need to be made in a process involving and consulting all parties involved.

### Other stakeholders:

Some stakeholders including representatives of producers and distributors argue that the current film financing system based on exploitation windows and exclusive licensing should be preserved. It attracts also other private investors who are looking at the guarantee as a positive indicator. At first exploitation in cinemas has a positive impact on the success of a movie and is hence important for the cultural diversity.

It is too early to change the AVMSD since it is a relatively new legal instrument.

Efforts to increase the funding base for content will lead to cost and bureaucracy that create barriers to enter the market.

Some respondents from the broadcasting sector express the view that the EU policy should aim at ensuring the sustainability of current financing models, based on contractual freedom. Ongoing support for PSBs is essential. Advertising income is the essential source of investment.

## *Other positions*

### Copyright licensing, copyright levies

Ultimately, contractual freedom is the best way to get flexible, commercially viable and consumer friendly solutions. New investors in original content should exploit the rights in secondary markets to ensure additional returns. Strong IP rights are a necessary precondition for investment in content.

Since broadcasters are the main content investors, in order to secure their funding capacity, it should be ensured that broadcasters' programmes are not altered, disaggregated or pirated.

Independent producers should retain their rights in order to be able to exploit their content on online platforms. Online service providers should make sure that creators are fairly remunerated.

### Public funding

State support for cultural activities should be supervised by an independent body to ensure its adequate use.

EU innovation funding rarely reaches the real innovators – European SMEs producing content.

Film funding schemes should be updated to allow films to benefit from digital distribution and the Single Market.

### Access to private funding

It is challenging for cultural SMEs to obtain financing from banks. Crowd funding partly fills the financing gap left by the decline of traditional financing sources.

### Re-transmission

A possible way could be not to charge PSBs when it comes to carry their signal by network operators. Instead, European PSBs should be encouraged to co-operate with operators in order to produce and distribute quality content of European origin.

### TV archives

Collaborative efforts by the EBU or ACT to make use of their content archives might generate revenue which could be used for the production of new content.

**QUESTION 6: IS THERE A NEED FOR EU ACTION TO OVERCOME ACTUAL OR POTENTIAL FRAGMENTATION AND ENSURE INTEROPERABILITY ACROSS BORDERS? IS THERE A NEED TO DEVELOP NEW OR UPDATED STANDARDS IN THE MARKET?**

*Convergence to the common standard HbbTV is considered as an important step that deserves EU action*

Member States and Regulatory Authorities:

Some replies from Member States authorities and Regulatory Authorities support explicitly this idea.

Other stakeholders:

Very few non-public stakeholders are in favour of an EU intervention for imposing HbbTV as a European standard.

*Full interoperability is considered as an important step that deserves EU action*

Member States and Regulatory Authorities:

Among the group of Member States authorities and Regulatory Authorities supporting this idea, the majority belongs to small and medium size countries. Some are particularly interested in having the HbbTV standard as a European standard. Some would prefer only to have interoperable platforms.

Other stakeholders:

Most non-public stakeholders in favour of having a high level of interoperability are broadcasters. Some of these players highlight the fact that the difference between software versions shipped with receivers in different territories places a burden on content providers to ensure that their applications function correctly on all potential software platforms from major vendors potentially available in their territories. One of them calls for the intervention of the EU through the availability of research funding for studying interoperability solutions. Some stakeholders suggest the use of HTML5 as a common, open source, middleware solution. The majority of network operators are also favourable to a long term solution based on an open standard. Another stakeholder is favourable to an open standard but would like to see the standardisation process run by ETSI. Some stakeholders are indeed favourable to an intervention in order to reach a similar convergence among the stakeholders as in the case of the mobile communication market. Some support also the idea of an EU intervention for achieving a common standard. Consumer and citizen protection associations and entities with focus on accessibility are in general in favour of having interoperability.

*No need for EU intervention, neither to impose nor to promote a European standard*

Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities consider that there is no need for EU intervention in order to impose or promote a European standard.

### Other stakeholders:

This position is also supported amongst research institutions and manufacturers which stress the fact that the main issue for contents accessibility is the different regulation among Member States authorities. Some stakeholders including network operators, digital companies and associations are not in favour of an EU intervention. Several stakeholders believe that potential future challenges should continue being solved by industry dialogue.

### ***EU role in facilitating the communications among stakeholders***

Some of the stakeholders that are against an EU intervention think that the EU should play a role in facilitating the communications among stakeholders.

Some stakeholders highlight the fact that improvements are needed in order to achieve the interoperability of DRM systems. Some suggestions go in the direction of having a common encryption format.

Full transparency in specifications and marketing so that consumers are clearly informed about the limits of the device is considered important by a few stakeholders.

**QUESTION 7: HOW RELEVANT ARE DIFFERENCES BETWEEN INDIVIDUAL PLATFORMS DELIVERING CONTENT (E.G. TERRESTRIAL AND SATELLITE BROADCASTING, WIRED BROADBAND INCLUDING CABLE, MOBILE BROADBAND) IN TERMS OF CONSUMER EXPERIENCE AND OF PUBLIC INTEREST OBLIGATIONS?**

*Differences between platforms delivering contents influence consumer experience*

Member States and Regulatory Authorities:

For a number of Member States authorities and Regulatory Authorities, differences between individual platforms delivering content are relevant for consumers. Indeed, convergence is bringing broadcasting and broadband services in a closer and more integrated way, reaching the consumers via various different platforms.

There are several factors which influence the consumption of media content by viewers. One factor is the availability of the service; this depends on the coverage of the network, so its ability to provide the content to a specific user. Secondly, the availability of network infrastructures reaching the end user is also relevant. Thirdly, in case of electronic devices accessing the network, audiovisual consumption also depends on the kind of contract between the user and the provider, affecting the type of reception, such as the data transfer speed, which might affect reproduction. A Regulatory Authority points to the importance of the digital literacy of the user, who must have certain skills and knowledge regarding how to use the different applications and interfaces. Another reply considers that the key differences are coverage, population density and measurement. In addition, some Member States authorities and Regulatory Authorities note that the different technological features of platforms lead to the development of various strengths and weaknesses among them, which also affect the viewing of their content by consumers.

A Regulatory Authority comments that, in the case of terrestrial and satellite television, the main downside is that users cannot choose and have to limit themselves to following the linear flow of the programming established by each provider. However, it goes on by saying, initiatives at a European level such as HbbTV allow access to broadcaster content via the broadcast platform, giving it the potential of a broadband platform. Moreover, it continues, for broadband audiovisual services users who can choose what to see and when to watch it. In addition, it concludes, access to content broadcast on the radio wave spectrum is free in most cases.

Some submissions note that the competing platforms have different strengths and weaknesses. Broadband and satellite offer greater capacity for channels at a fixed location, while terrestrial as well as mobile offer portability and mobility, but are limited in the number of channels. Other Member States highlight that the possibility to have different platforms gives the consumers more freedom of choice, which increases their probability to find the content they want and, thus their satisfaction.

Other stakeholders:

Among the majority of other stakeholders including network operators and the broadcasting as well as the digital sector, some emphasise the influence of different platforms on consumer experience.

One stakeholder considers that broadcasting offers consumer-friendly TV access with low investment costs, no operating costs combined with easily installed access. Furthermore, it expresses the view that DTT provides the highest quality of service for linear, mass-attractive audiovisual content services, whereas mobile broadband networks are not capable of providing high-quality television services.

Other respondents, mainly from the satellite sector argue that the use of satellite broadcast infrastructures in hybrid broadcast or broadband network configurations is very efficient both in terms of prices and quality for consumers. Some entities with focus on accessibility consider that the provision of different platforms highly affects the consumption by blind or partially sighted people. Only very few Member States authorities require audio-described programming on television. Those who do on linear platforms usually do not on different media.

One respondent point out that in terms of consumer experience linear broadcasting continues to attract strong consumer interest and gave the example of the 2012 London Olympics, which most viewers preferred to watch on traditional TV rather than online. Another stakeholder from the digital sector comments that new networks and digital platforms can contribute much more to consumer experience than conventional platforms.

Some representatives of broadcasters argue that broadcast and broadband networks are complementary. While broadcast networks are optimised to deliver linear content over a large coverage area to a mass audience, broadband networks are optimised to deliver non-linear content to small audiences. Therefore, they foresee that broadcasting platforms, and in particular DTT platforms, will continue to play a crucial role in delivering linear broadcast content to European citizens.

### *Differences are particularly relevant for consumers in rural areas*

#### Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities point out that low population or rural areas may be better and more reliably served by terrestrial television than by mobile or broadband operators. Thus, a solely radio based solution may not provide a future proof infrastructure for rural areas. A Member State argues that DTT plays a very important role in a sparsely populated country, as it offers content to all citizens. Thus, terrestrial broadcasting is at the moment the only nationwide network. This is possibly due to its technological capability to reach everyone in the country. Another Member State authority notes that some remote areas, which do not have access to cable networks or IPTV, have no alternative to DTT.

A Regulatory Authority stresses that, in order for broadband to be really effective, it would be necessary to develop an infrastructure that allows an appropriate connection to new audiovisual media services for the whole population, without any areas being excluded.

Another one notes that wireless platforms allow the coverage of rural areas with lower population density at lower costs.

A Member State, where the terrestrial reception has become rare, notes that terrestrial broadcasting is still used to feed isolated cable networks.

#### Other stakeholders:

A number of other stakeholders share the view that differences are relevant for consumers in rural areas. Some representatives of network operators and the digital sector point out that the increased availability of broadband for the dissemination of audiovisual works would increase cultural inclusion in the EU, as high-speed broadband networks and digital audiovisual content can reduce the current analogue cultural divide between urban and rural EU citizens.

#### ***Differences between platforms delivering content influence public interest obligations***

#### Member States and Regulatory Authorities:

A Regulatory Authority notes a decrease in the number of subscribers to pay TV platforms over the last two years in that Member State. This may be due on the one hand to the price of the services and on the other hand to the wide range of devices that can connect to, and access, audiovisual media services.

Another Regulatory Authority argues that the regulator's role is to ensure that citizens have access to a free supply provided by the public service, which is possible only under the terrestrial broadcasting model. This view was shared by a Member State which also notes that DTT is the most appropriate platform to ensure on an ongoing basis free access for all consumers wherever they may be to the content of public service and to other popular services.

A Member State comments that it is important to continue to be able to require a limited number of public service channels to be available free at the point of use on any platform which serves a significant proportion of the population.

Also another Member State reports that the DTT platform, which covers 97% of its population, remains the primary mode of reception and aims to keep this pre-eminence. It has characteristics that make it unique for viewers, publishers and public authorities. This includes that it is free, anonymous and simple in terms of reception. There is a high awareness of the channels broadcasting on this platform.

#### Other stakeholders:

Other stakeholders including the broadcasting sector consider the main advantage of the terrestrial over-the-air broadcasting platform is in its effectiveness to distribute content to a wide audience. In addition, this distribution platform guarantees universal access to televised content with no social or economic discriminations, and complies with the requirement of universal coverage of the public service. The terrestrial broadcasting can also be provided at lower costs to secondary residences. Therefore, they think that it is the only truly democratic model and it must be protected. The benefits of terrestrial broadcasting platforms, such as universal coverage, emergency preparedness and mobile reception without congestion are stressed.

The existence of the terrestrial broadcasting platform also increases competition in the market, as it would constitute an alternative to the cable and satellite platforms. At present, mobile broadband cannot guarantee access at top quality for all users, as congestion may occur, so it is important that necessary frequencies are available for DTT.

Another contribution emphasises the importance of satellite broadcast in a hybrid configuration; this infrastructure would enable the early delivery of Connected TV experience to all European users.

A broadcaster highlights the importance of DTT in terms of public interest, as it is the universal platform which can deliver strong economic and social added value. Thus, in its opinion, any case for change would need clear evidence of the costs and benefits involved, and would need to take into account the considerable costs of transition, and the impact on consumers.

***Differences between platforms delivering content do NOT influence consumer experience and public interest obligations***

Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities argue that differences between platforms affect neither consumer experience nor public interest obligations. One Member State notes that there are no relevant differences, when distribution networks are of sufficiently high quality. Another Member State emphasises how the lines between broadcasting and broadband are blurring in the perception of consumers.

Other stakeholders:

A stakeholder points out that in a converging world the differences between platforms are much less relevant than in the analogue era. Different platforms are being increasingly shaped by the same policy, regulatory and competition regimes.

***Technological differences lead to different regulation and affect competition***

Member States and Regulatory Authorities:

The view is expressed that differences between different platforms exist not only at technical level, but also in terms of regulation. Others argue that the technological differences are not significant as the obligation related to services of public interest applies equally to different platforms.

Other stakeholders:

A representative of consumer interests' points to the need for a competitive management of infrastructures and spectrum in order to ensure that consumer access to audiovisual services is not hampered by the lack of competition. Another one argues that free competition between platforms does not guarantee access for consumers.

On the one hand, the view is voiced that must-carry obligations are no longer to be justified in the future. On the other hand there is also the opinion that must-carry rules should be introduced in order to ensure that culturally diverse content can be found.

Some representatives of broadcasters consider that only if all distribution channels continue to be available, different products will be offered, and the variety of consumer and user needs will be served. Therefore, they call for the provisioning of technology-neutral access to infrastructure and audiovisual media service providers' platforms in

order to maintain competition at European level. That would contribute to a healthy industry that has incentives and is able to finance different forms of content in various ways.

***Convergence may have risky consequences for consumers in the future***

Member States and Regulatory Authorities:

One respondent point out it will be difficult for viewers to distinguish the provenance of the content and to understand which rules apply. Therefore, convergence may be risky for the protection of consumers' interests.

***The effect of technological differences on future regulatory interventions***

Member States and Regulatory Authorities:

A Regulatory Authority considers that existing platforms are complementary rather than competing. Concerning the future use of the 700 MHz band, the view is voiced that flexibility is important so that other uses continue to be possible in addition to wireless broadband. To make the right choices, they also need to know the future capacity requirements for mobile broadband as well as for terrestrial television and broadcasting support services (PMSE).

A Regulatory Authority notes that it is essential to create a regulatory framework that responds to the convergence, taking into account the current dynamics of spectrum regulation and content. As a starting point, it constituted an internal working group with the purpose of finding a new definition of media and public service at European level.

Other stakeholders:

Among other stakeholders, one respondent notes that Member States shall consider democratic and social needs and, in accordance with the development of markets and technology, introduce obligations for the provision of services of general interest on all platforms and transmission paths. Another one points out that delivery channels used in EU countries vary with use and importance given their traditions for public interest, such as cable in Germany or DTT in the UK and France. However, it says that all platforms should receive equal treatment to prevent technical fragmentation. The importance of an open and neutral Internet is also stressed with a view to ensure that differences are minimised through technological and service innovation, and calls for the safeguarding of net neutrality as a priority in this policy area.

One broadcaster suggests that, in possible future proposals, any clearance of broadcasting from the 700 MHz band (694-790 MHz) should be accompanied by early certainty that full support and funding for both viewers and industry from Member States will be given.

This would be consistent with the principles set out in the Radio Spectrum Policy Programme. It argues also that this must be accompanied by strong assurances on the long-term continued use of 470-694 MHz for DTT to enable decisions to invest in this platform. Any proposal for better coordination and consistency - of authorisation

conditions for wireless broadband across the EU - should not override Member States' legal safeguards to take account of particular general interest objectives such as cultural diversity and media pluralism.

**QUESTION 8: WHAT FREQUENCY ALLOCATION AND SHARING MODELS CAN FACILITATE DEVELOPMENT OPPORTUNITIES FOR BROADCASTING, MOBILE BROADBAND AND OTHER APPLICATIONS (SUCH AS PROGRAMME-MAKING EQUIPMENT) CARRIED IN THE SAME FREQUENCY BANDS?**

***In favour of a new digital dividend in the 700 MHz band***

Member States and Regulatory Authorities:

Numerous respondents are in favour of a new digital dividend in the 700 MHz band. However, the view can be found that this requires no further intervention from EU. A Regulatory Authority highlights the mandate given to CEPT. Another one states that the costs of migration to lower band infrastructure for broadcasting channels should be the responsibility of the States, and not left to the broadcasters. They suggest that this migration could be funded by the auction of spectrum for mobile operators.

Other stakeholders:

Some representatives of companies and associations are in favour of this solution. One suggests to have dedicated frequencies in the 700 MHz band for reliable high-quality mobile broadband in rural areas. Some network operators are also quite interested in this opportunity. In particular, one of them suggests that due to a potential risk of interference between transmitting mobile devices in the vicinity of a television receiver set e.g. in a living room environment, downlink only usage is considered for the mobile broadband in the 600 MHz band with an uplink anchor frequency in any other existing band used by a service provider of a mobile network service.

***Better usage of the spectrum and further effort to investigate on interference effects***

Member States and Regulatory Authorities:

Some submissions do not mention the second digital dividend, and simply refer to a better usage of the spectrum and encourage further effort to investigate on interference effects. A Regulatory Authority is in favour of a co-primary use of radio spectrum among mobile TV services and mobile communication services.

Some stakeholders demand more spectrum for Wi-Fi as they consider it an important service to off-load mobile networks. One Member State explicitly mentions this.

Other stakeholders:

Some companies and associations from the digital sector and network operators as well as one consumer protection association advocate a new and dynamic use of the spectrum. One reply encourages the use of white spaces. Some broadcasters support this development with the provision that the conditions for the use of such "white space technology" do not affect broadcasting services. One broadcaster underlines the fact that DVB-T2 offers great opportunities for long-term sharing of the 700 MHz frequency band by radio or cellular phone. Therefore they suggest not allocating the 700 MHz resources to mobile broadband.

Among network operators, some suggest to follow a careful path with a clear economic assessment, while one respondent asks to impose interferences test before the allocation of bands adjacent to broadcasting bands. A similar position is taken by a manufacturer. Some stakeholders demand more spectrum for Wi-Fi as they consider it an important service to off-load the mobile network. Some companies and associations request that sufficient spectrum is available for the unlicensed use of Wi-Fi applications. A strong support to the idea of having more unlicensed spectrum is also coming from some broadcasters.

Radio related stakeholders are worried about a possible reduction of bandwidth dedicated to their services.

### ***No further reduction of spectrum available for broadcasting in the short term***

#### Member States and Regulatory Authorities:

Although in favour of having a better usage of the spectrum, several respondents emphasise the fact that a further reduction of spectrum available for broadcasting should not be implemented in the short term but only after a rigorous analysis of pros and cons.

#### Other stakeholders:

Some broadcasters share a similar view and consider the technology not yet ready for coexistence. Moreover, they have questions about the business case. Another representative from the broadcasting sector believes that cognitive white space devices should be licensed with well-defined conditions (e.g. mandatory use of geo-location data bases) in order to ensure that they do not interfere to broadcasting services and PMSE. One network operator asks the European Commission for a strong and firm stand at WRC-15 in favour of terrestrial broadcasting in the rest of UHF Band. Another respondent considers the use of the 700 MHz band for mobile broadband counterproductive. Satellite related respondents warn of the fact that space-to-earth transmissions (downlinks) are highly susceptible to interference from terrestrial transmitters in all frequency bands. This makes spectrum sharing between small-power receive-only dishes and high-power mobile broadband equipment highly challenging, if not totally impossible. Similar concerns are expressed by other respondents including representatives of viewers. Many of these players consider that the issue of DTT and mobile broadband coexistence does not affect Member States uniformly and thus there is not a one-size-fits-all approach to this issue.

Other replies stress the need of preserving the possibility for PSME to reuse broadcast frequencies.

Some content producers express concern that insufficient bandwidth would lead to a poor content visualization.

Other respondents would like to have their products visible through different platforms (systems). There is criticism that there are too many institutions involved in the reallocation process. A rationalisation of those would help in terms of clarity and transparency.

**QUESTION 9: WHAT SPECIFIC RESEARCH NEEDS WITH REGARD TO SPECTRUM HAVE TO BE ADDRESSED TO FACILITATE SUCH DEVELOPMENT?**

***Supporting research assessing the coexistence of broadcast and broadband services***

Member States and Regulatory Authorities:

Some replies support research assessing the coexistence of broadcast and broadband services, including the interoperability between LTE-4G and DVB-T, and the business opportunities emerging thanks to the convergence. In addition, some mention that GSM bands should be considered for digital dividend III.

Other stakeholders:

Some network operators support this view. Several broadcasters are also in favour of having more research on coexistence issues and on the integration of broadcast receivers into mobile devices. They are concerned to lose some of their capacity and they consider broadcast and broadband technologies complementary. In their view, it is not realistic to think that these two media delivery platforms will converge. Some representatives of the digital sector are also favourable regarding research on the improvement of the spectrum usage with possible coexistence and cooperation among broadband and broadcast systems. In general, many of the stakeholders ask for supporting research in providing a better and more competitive usage of the assigned frequencies.

Some broadcasters insist on the fact that it is essential to evaluate the requirements for terrestrial broadcast distribution of content through mobile networks, including the number of transmittable programmes, the required quality and further requirements such as reliability or coverage. Moreover, some respondents including broadcasters request studies assessing the cost of moving the service from broadband to mobile platforms.

***Studies on the effect of offloading traffic from mobile networks to Wi-Fi***

Other stakeholders:

Some stakeholders underline that new studies on the effect of offloading traffic from the mobile network to Wi-Fi should be carried out, since the growth on mobile traffic demand was overestimated due to wrong assessment of the offloading impact. Others request more bandwidth dedicated to Wi-Fi.

***Preserving broadcast and satellite frequencies***

Member States and Regulatory Authorities:

Some respondents among Member States authorities and Regulatory Authorities stress the importance of the broadcasting service (both video and radio) and explicitly recommend preserving broadcast and satellite frequencies. They ask not to rush into a further reallocation of broadcast spectrum for mobile communication. Even in Member States where most of the TV signals arrive through the cable, broadcasting systems are used to feed isolated cable networks.

Other stakeholders:

Some broadcasters provide similar replies.

***Studies on the usage of the mobile linear and non-linear services***

Member States and Regulatory Authorities:

The need for studies on the usage of linear and non-linear services in mobile networks is supported by some Regulatory Authorities.

Other stakeholders:

Some representatives of the broadcasting sector also support this idea.

***Studies on better image compression and coding techniques***

Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities also see a demand for studies on better image compression and coding techniques to improve the usage of bandwidth.

**QUESTION 10: GIVEN CONVERGENCE BETWEEN MEDIA, IS THERE EVIDENCE OF MARKET DISTORTION CAUSED BY THE REGULATORY DIFFERENTIATION BETWEEN LINEAR AND NON-LINEAR SERVICES? IF YES, WHAT WOULD BE THE BEST WAY TO TACKLE THESE DISTORTIONS WHILE PROTECTING THE VALUES UNDERPINNING THE EU REGULATORY FRAMEWORK FOR AUDIOVISUAL MEDIA SERVICES?**

*Current regulatory distinction between linear and non-linear services is still appropriate*

Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities support the current regulatory distinction between linear and non-linear services. It is argued that television broadcasts have a larger audience and can still be presumed to have a greater impact on society compared to on-demand services. Another reasoning is that linear and non-linear services belong to separate relevant markets and are therefore not in competition.

Stricter rules for European providers of on-demand audiovisual services may, according to some, lead to competitive disadvantages in relation to players from third-party states on the market and the press.

Other stakeholders:

Some representatives from the broadcasting and digital sector, network operators, producers, publishers and manufacturers support the current regulatory distinction between linear and non-linear services.

This can be for reasons relating to differences in the degree of consumer choice and control exerted. Another argument is that linear and non-linear services are complementary and in particular provide new opportunities for traditional broadcasters to innovate and diversify their range of services.

Others deem that linear services retain their social and opinion-forming significance despite competition from other media.

*No evidence of distortion*

Member States and Regulatory Authorities:

A number of Regulatory Authorities and Member State authorities are of the opinion that there is no evidence of any market distortion caused by the regulatory differentiation between linear and non-linear services.

Other stakeholders:

Many stakeholders including from the broadcasting sector and network operators consider that there is no evidence of distortion. They argue for instance that linear services are still very strong and that non-linear services are complementary to linear services or that it is simply premature to assess how mass consumer expectations and behaviour might shift.

For the future, a topic for further study could be whether the fundamental principles concerning the protection of minors, fundamental rights, human dignity, racial hatred, discrimination and violence should be dealt with in the same way for both linear and non-linear services.

Some come to the conclusion that there is no problem since the vast majority of content that is accessed on-demand has already appeared on linear services, and therefore has already been subject to the “broadcast” regulatory regime. Hence, most of these standards are in practice easily transposed to an on-demand environment or there are only marginal effects arising from the difference in regulation. Content providers will in practice be driven to adhere to similar levels of protection by the need to meet consumer expectation, regardless of the regulatory requirements.

### ***Blurring of the difference between linear and non-linear services***

#### Member States and Regulatory Authorities:

According to some Member States authorities and Regulatory Authorities, the difference between linear and non-linear services, especially from a consumer point of view, is blurring.

#### Other stakeholders:

Some stakeholders including some representatives of network operators, broadcasters, manufacturers and consumer protection organisations share this view.

### ***The differentiation between linear and non-linear services needs to be revised/distortion in the market***

#### Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities argue that the graduated regulation laid down in the AVMSD needs revision.

Supporting arguments include visible indications that the non-linear and linear services begin to compete for the same audience even though the degree of control by the users is still a factor for non-linear services.

Some argue that the concept of "degree of control" for non-linear services must be put into perspective and certainly cannot always justify reduced regulation for these services. Once the step of the choice of the program is crossed, the consumer ends up in a situation of viewing similar to that of a linear service, and therefore it is right to expect a level of protection equivalent to that existing for linear services.

Others argue that in a converging world the same services should be regulated in the same manner irrespective of the device on which they are consumed. Hence, there should be no regulatory differentiation between linear and non-linear services.

Another approach is to question the suitability of graduated regulation now that services subject to contrasting levels of regulation are gathered on a single screen.

A Member State argues that operators of linear services are complaining about more limited room for manoeuvre vis-à-vis non-linear services.

Another deems that having stricter rules for linear services was traditionally justified by the impact of these services, but that the difference between linear and non-linear services will become increasingly obsolete. Another considers that as regards protection of minors, the differentiation between linear and non-linear services is no longer valid and that there should be an in-depth discussion (reflection process) on the establishment of minimum standards for digital content in European media.

A Regulatory Authority argues that the differentiation between linear and non-linear services might limit free competition.

#### Other stakeholders:

A number of stakeholders consider that the distinction between linear and non-linear services is not justified in certain areas covered by the AVMSD, particularly as regards commercial communication and protection of minors. The concept of "degree of control" that the user would be able to exercise remains relatively speculative for non-linear services and certainly cannot always justify a form of relief from the regulation for those services. The distortion exists and can be eliminated by legislation and regulation equal for everyone, new and traditional media.

The two-tier approach has created an unlevelled playing field between linear and non-linear audiovisual media services, according to one media company, and this approach has become unsustainable.

An organisation representing viewers advocates an extension of broadcast TV regulation to on-demand TV services.

Another consumer organisation argues that all service providers, be they linear or non-linear, should be bound by the same obligations to comply with consumer protection rules for as long the provider has responsibility for the choice of the content and determines the manners in which it is organised.

Another view is that, even if at the moment there is no evidence of any market distortion caused by regulatory differentiation between linear and non-linear services, in the longer term, it might be necessary to harmonise the regulatory framework between linear and non-linear services further.

#### ***Competition could be distorted by operators from outside of the EU or operators outside of the scope of the AVMSD***

#### Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities argue that more and more services are provided from outside the EU, which could distort competition in the EU.

A Regulatory Authority considers that the regulatory harmonisation of different distribution platforms should not represent deregulation for everyone, but incorporate activities and players that are currently outside the scope of AVMSD.

#### Other stakeholders:

Also other stakeholders from the broadcasting sector argue that with convergence, there is an increased risk of distortion between these two categories of services, in particular because of the increasing importance of content produced outside the European Union and the important role taken by platform operators.

Some argue that the main challenge is that soon only a fraction of services in the market will fall under the AVMSD and that the Commission should consider how we can create a regulatory environment where principles such as editorial responsibility, qualitative rules of advertising and protection of minors are the cornerstones for all audiovisual services, regardless of the device, the delivery network and the geographical base of the service provider.

Others deem that the Commission must focus its attention on the asymmetric regulation of TV-like services per se (whether delivered as linear or on-demand) compared with alternative display advertising platforms and media that are essentially unregulated.

Another respondent deems that further monitoring is necessary.

### ***Possible ways forward***

#### *1. Liberalisation*

##### Member States and Regulatory Authorities:

A number of Member States authorities and Regulatory Authorities consider that distortions in the market place could be addressed by eliminating those provisions of the AVMSD that are not appropriate any more in the light of progressing convergence or lightening the regulatory burden for linear services or repealing "old broadcasting regulation".

One suggestion is that more liberal conditions for the linear offers could be achieved by ending the quantitative advertising rules for linear television, without hurting the values underlying the EU legal framework for audiovisual media services. Future market distortions would be avoided through a coordinated supervision of advertising in both linear and non-linear services. Member States should establish uniform supervisory structures for both linear and non-linear services.

Another respondent argues that in any regulatory action the emphasis should lie on achieving more flexibility to adapt to technological and market developments, taking into account the media sector's competitiveness.

##### Other stakeholders:

Some stakeholders are of the opinion that, as a general principle, the increase in the offer of audiovisual content should justify the "flexibilisation" or de-regulation of most of the regulatory obligations applicable to all the services, but not at the cost of the free press.

Linear and non-linear media services should be subject to the same advertising restrictions and rules.

Some argue that any de-regulation of the current services within the scope of the AVMSD would need to look at the growing asymmetry between media companies and media platforms as well as aggregators in both the regulatory and fiscal playing fields. It is at this juncture that an evaluation of the cross-over between AVMSD and the e-Commerce Directive would be necessary.

Others deem that in the event of re-opening the AVMSD, "treating like as like" should be the guiding principle of such a review. At the same time, the starting point should be the need to appropriately de-regulate the regime that has applied to so-called "traditional" media players.

Some urge the Commission to remain open to the concept of minimising regulatory requirements for linear services as well as the option to raise regulatory requirements for non-linear services, while taking into account consumer expectations.

Other stakeholders from the broadcasting sector wonder whether, for example, quantitative advertising regulations are still up-to-date and argue that, to sustain the future success of the European audiovisual sector and maintain content investment, there will need to be a wholesale liberalization of the rules on commercial communications.

A respondent from the digital sector argues that protecting legacy business models may result in stifling the development of the market.

## *2. Focus on general interest*

### Member States and Regulatory Authorities:

A Regulatory Authority puts forward the possibility to concentrate regulation on certain genres: news, current affairs, political information, education, programmes for children and consumer information. For other content, such as entertainment a lighter regime could be used.

### Other stakeholders:

Some stakeholders refer to the EP's recent Resolution on Connected TV which refers to limiting the more stringent regulation of linear content to those (relatively) few "services of general (public) interest". This concerns those of particular importance due to the nature of the transmitted content, for instance news, and those which additionally have a significant audience. This would include services with a high socio-political impact, which equates with opinion-forming power.

Others deem that one potential approach to promote European values in the AVMSD is to restrict public interest policy objectives solely to public service broadcasting. Commercial actors, be they EU or non-EU broadcasters or on-demand aggregators, would then be relieved from public service obligations. One stakeholder deems that "authorisations" should be limited to programmes that are relevant for the forming of public opinion.

One commercial broadcaster argues that the best way to tackle distortions, and to promote values and protect viewers and users alike would be to move away from regulation based on types of distribution and towards regulation focused on content.

## *3. Other ways forward*

### Member States and Regulatory Authorities:

A Member State deems that the AVMSD should be revised within five years. This means determining which values need to be protected in the new converged market, while being cautious about automatically extending the rules to the non-linear domain. It may be reasonable to raise the EU minimum standard for some subjects, such as the protection of minors.

Another Member State supports the principle of technological neutrality in the AVMSD when the same services are regulated in the same way regardless of the device on which they are received. This approach should be supported by national legislation.

Another Member State comments that companies with mainly non-linear services should not be treated preferentially in relation to linear broadcasters.

According to one Regulatory Authority, there is a need for a more consistent minimum standard to reduce the asymmetries between linear and non-linear content to meet the challenges of convergence and in line with audiences' expectations. This should be accompanied by a mix of regulation, self-regulation and measures that empower people to manage their and their families own access to content. We should consider whether a more harmonised approach to protection of standards across linear and on-demand programmes services might be necessary, regardless of delivery mechanism. One possible way for a new protection framework for television services could be to create regulated "protected spaces" or "safe zones".

A public authority in another Member State points to the case where the consumer, after having made an active choice for a non-linear service, subsequently has the same level of control as for linear services. This means for instance that the consumer watches one piece of content and other content follows without the consumer actively triggering it. The respondent deems that those non-linear services should be subject to legislation equivalent to that of linear services; but this does not mean that total 'undifferentiation' must apply. Depending on the area, it remains obviously relevant to take into account the characteristics of linear services and conversely non-linear services. Another public authority argues that a level playing field is important, but this does not mean that rules for linear services should be applied to non-linear services, or vice versa. A Regulatory Authority of this Member State puts forward the view that in the AVMSD, five areas can be identified in which linear and non-linear services are subject to different rules. It is appropriate to examine, for each of these areas, whether differentiation should be maintained or not. These areas are: the possibility for any Member State, to intervene over a media service provider established in another Member State; the protection of minors; the promotion of European works; access to events of major importance for society and to short extracts of events of great interest to the public; and the right of reply. As the AVMSD deals differently with linear and non-linear services for these areas, this risks creating market distortion. Harmonization between the two regimes is therefore desirable.

#### Other stakeholders:

In the future, regulatory frameworks may struggle to keep up with the pace of change. Regulators will face increasingly difficult choices about the appropriate scope of regulation, how to implement regulatory change, and how to balance consumer protection, innovation, investment in content and economic growth.

In the medium term, the technical differences will be increasingly reduced and the take-up of services as well as the blurring of boundaries from a consumer perspective might lead to a situation where market distortions could occur, according to some representatives of network operators.

Market distortions are rather generated by the way Member States have implemented the AVMSD. The AVMSD establishes, in a generic way, a framework with minimum requirements, giving great discretion to Member States to implement a lighter or more

onerous scheme than the minimum established in the Directive. Such a fragmented implementation opened the door to forum-shopping benefiting opportunistic companies in the EU. Hence, regulatory fragmentation should be reduced as far as possible.

One public service broadcaster argues that it does not support a crude “levelling up” or “levelling down” of regulation across linear and non-linear services.

A possible response to future market distortion between linear and non-linear services could be to consider the level of consumer control exercised in relation to a linear service through technical measures such as pin protection or the fact that a consumer has actively paid for a premium subscription channel when assessing the appropriate level of regulation.

In the medium-term, monitoring is likely to be necessary to detect any market distortion between linear and on-demand services, and between services in and out of scope of the Directive. It is also important to monitor the risk of distortion not just between linear and non-linear services, but also within the non-linear market.

One stakeholder deems that in order to establish whether market distortion is happening, concrete market assessments should be undertaken. In doing so, it might be important to recall the economic downturn and the financial crisis that is affecting the European Union and the effects that this has had on the audiovisual sector.

As the location of the appropriate boundaries is shifting, there is a need to build greater flexibility into the regulatory model. For audiovisual media services, this may mean in due course changing the fixed definitions that are hard-wired in legislation and replacing them with a process that allows the specification of the boundaries to be modified over time (key principles), without the need to change the Directive itself.

In case the AVMSD would be re-opened, it would be useful to start with a "clean sheet of paper" and analyse what regulation is necessary and justified. Neither industry nor consumers will be served by a fossilized approach to regulation.

Any future regulatory framework should be adapted to the changed market situation, going beyond any distinction between linear and non-linear modes, given their perceived interchangeability among users.

One respondent states that consumers expect consistent standard regulations, e.g. with respect to principles regarding the media, protection of minors and advertising. Thus, the different legal frameworks need to be brought into accord in a way that ensures a high level of protection. In addition, there is a need for a supervisory authority empowered to monitor and impose penalties on online media service providers (including providers from third-countries outside the EU that conduct business across borders).

**QUESTION 11: IS THERE A NEED TO ADAPT THE DEFINITION OF AVMS PROVIDERS AND/OR THE SCOPE OF THE AVMSD, IN ORDER TO MAKE THOSE CURRENTLY OUTSIDE SUBJECT TO PART OR ALL OF THE OBLIGATIONS OF THE AVMSD OR ARE THERE OTHER WAYS TO PROTECT VALUES? IN WHICH AREAS COULD EMPHASIS BE GIVEN TO SELF/CO-REGULATION?**

*Arguments favouring a scope extension*

Member States and Regulatory Authorities:

The most prominent reason for extending the scope of application is a perceived distortion of the competitive conditions between providers of audiovisual media already subject to the rules of the Directive and third parties supplying similar or identical services, but not falling within its scope.

Several Member States authorities and Regulatory Authorities explicitly highlight that some service providers offer their services from outside the Union and therefore do not fall under Member State jurisdiction. A proposed solution is the notion of “virtual establishment” introduced in the context of the Lescure report.

Others point out that some providers provide audiovisual content either without provoking regulatory scrutiny or without qualifying as audiovisual media service providers due to technical considerations. Here the imbalance in competitive conditions appears to reflect a distinction between old and new media enterprises, with the latter enjoying regulatory holidays that are not substantively merited. There is notably discontent with the increasing role played by parties facilitating access in the form of platforms or applications.

Several respondents support expanded regulatory coverage of Internet video platforms beyond the content already covered.

Such proposals are complemented by calls for introducing new concepts such as “distributor” (notably by countries who already have such a concept in their national legislation) or “platform” that would allow regulatory obligations to be addressed to parties currently outside the scope of application. Such reasoning is inspired by the approach to platform regulation under the German Interstate Broadcasting Treaty.

Other stakeholders:

The fact that some service providers offer their services from outside the Union is also identified as a problem by consumer protection organisations, industry associations from the media and electronic communications sector, as well as individual companies. For most of them a perceived solution is the widening of the regulatory ambit of the Directive by applying a targeting logic.

The imbalance with companies falling outside of the scope of the definition of audiovisual media service providers for technical reasons provides another argument in favour of extension of the AVMSD advocated by some broadcasters and industry associations. A general response to this phenomenon is to focus on the concept of editorial responsibility and its role in determining the scope of application. Some respondents including some from the broadcasting sector and consumer protection suggest revising the concept, in particular to allow coverage of Internet video platforms.

Other parties suggest that an extension of the scope should be only considered, if domestic authorities fail to properly apply the rules of the AVMSD and corresponding transposition measures.

### ***Arguments against a scope extension***

#### Member States and Regulatory Authorities:

The premature nature of possible further intervention is pointed out.

A forward-looking approach suggests focusing on building consensus about the values to be protected in all media services, whether audiovisual or not.

#### Other stakeholders:

A number of respondents reject the idea of changes to the current scope of the Directive because they deem that the AVMSD and corresponding transposition measures have not been applied long enough to allow for appropriate evaluation. This position is supplemented by arguments appealing to the logic of not changing a winning team.

Moreover, it is argued that services not yet falling within the scope of the Directive will be regulated by general rules of law, which at this stage of market development can be considered sufficient.

As regards the regulation of the means of access to audiovisual media services, respondents argue that including devices, platforms and portals into the Directive would be contrary to its underpinning logic of technology neutrality. This argument is notably put forward by trade associations representing equipment manufacturers. The stage of market development is considered such as to make further intervention premature and disproportionate even if the "how" of regulating were clear. This idea is shared by respondents from different parts of the industry including broadcasters, producers and distributors.

Finally, a number of respondents opine that further regulatory development must aim to remove regulatory pressures in order to improve international competitiveness rather than extending EU law so it has an extraterritorial scope beyond the EU. Support for this point of view derives from trade associations with members in both, the media and electronic communications sector, electronic communications and content production. These appear to reflect the interests of parties seeking to eschew further obligations or to decrease compliance obligations in order to strengthen their standing in the EU. From representatives of the Internet, software and digital media industry, there is a general sentiment that further extending the scope of the AVMSD would be liable to prejudice innovation and not respond to a proven need for regulatory intervention. The innovation argument is also supported by a user organisation.

### ***Areas in which emphasis could be given to self/co-regulation***

#### Member States and Regulatory Authorities:

Many Member States authorities and Regulatory Authorities are of the opinion that self- and in particular co-regulation is a valuable alternative to regulation.

Some Regulatory Authorities and Member States underline the point that self- and co-regulation measures can be particularly useful in certain specific areas such as protection of minors, advertising or accessibility obligations. A Member State additionally pointed to other areas such as: self-promotion, announcements made by the broadcaster in connection with its own programmes and other kind of announcements or cross-promotion or different ways of coexistence of editorial content and advertising. Benefits of self- and co-regulation are their flexibility and ability to adapt more rapidly to technological and market developments compared with a legislative processes. They guarantee the response of the solutions to market needs and their effective implementation.

Self- and co-regulation may also include players and services that are not covered by the Directive and may therefore serve to export standards beyond the scope of the Directive. According to a Regulatory Authority, this approach is also better suited to closing gaps in the regulation, e.g. self-regulation could be used in cases where the AVMSD does not apply, especially where a service provider does not fall under the jurisdiction of a Member State.

Co-regulation is a preferred option of some Member States authorities and Regulatory Authorities.

One of them proposes minimum harmonization combined with co-regulation which would allow all Member States to establish minimum rules and co-regulation mechanisms more specifically than in the current directive. According to them, these co-regulatory mechanisms have many advantages compared with self-regulation and classic regulation: participation of professionals in the sector during the regulatory process would provide a better understanding of commercial realities in a sector that is changing very quickly; participation of self-employed persons in the regulated sector that guarantees an efficient and neutral system; prerogatives and real powers of control (as opposed to “simple” self-regulation). Co-regulation systems that work well are born out of a desire of industry to participate in the process of regulating.

Similarly, another respondent considered that any enlargement of the scope should be carried out within a framework of reduction of regulatory burden (a minimum regulatory framework, to ensure both a high level of protection of such legal goods as protection of minors and a wide freedom of action for operators).

According to a Regulatory Authority it is necessary that new modes of regulation, involving more civil society and public authorities develop so as, on the one hand regulation is accepted by traders who were not subject to supervision, and on the other that regulation is based more on the principle of social responsibility shared between the public authorities, operators and users. Nevertheless, in their view it is still necessary that independent regulatory bodies should be able to monitor compliance with the rules. This approach, which could be called supervised self-regulation, could also be implemented through co-regulation.

#### Other stakeholders:

This view was supported by many broadcasters, network operators, cinema, film and TV producers and distributors as well as publishers who were of the opinion that convergence makes it necessary to examine whether self- and co-regulatory models would be a more appropriate way of regulating audiovisual media services.

As argued by one broadcaster, self- or co-regulation has proven to be successful in fields where statutory regulation has its limitations, e.g. in addressing not only media or e-commerce providers governed by European legislation but also those from abroad. One current example is the common identifier for online behavioural advertising on websites in Europe as well as in the US.

A representative of broadcasters considered that in many areas of audiovisual media services, it should be possible to limit legal provisions to basic rules and leave more detailed rules to self- and co-regulation. When deciding on the kind of instrument to adopt (statutory regulation, co-regulation or self-regulation) the respective potential benefits and disadvantages of each of the solution should be considered.

In the opinion of some digital stakeholders, the Commission should consider removing existing regulations that are no longer needed in order to deliver fundamental policy objectives. This would level the regulatory playing field for the benefit of both traditional broadcasters and new online content services and stand the test of time. The details should be left largely to stakeholders, through self-regulation and standardisation efforts.

Another respondent argues that rather than re-opening the Directive it may instead be possible to complement what is already in place with self- and co-regulation. Similarly, one broadcaster representative points out that rather than seeking to extend the scope of the Directive to other areas, which may not be practicable or desirable, it would be more useful and potentially more effective to consider whether existing rules should be relaxed. In the meantime, the most practical and potentially most effective approach is to encourage the development of self-regulatory initiatives, as well as media literacy programmes.

However, most consumer groups and organisations with focus on accessibility as well as individuals, express more negative views on self-and co-regulation pointing out that their experience shows that self-regulation is not effective (e.g. in the area of alcohol advertising). One of them in particular advises a more cautious approach with self-regulation as regards the Internet, where consumers are the most vulnerable.

**QUESTION 12: WHAT WOULD BE THE IMPACT OF A CHANGE OF THE AUDIOVISUAL REGULATORY APPROACH ON THE COUNTRY OF ORIGIN PRINCIPLE AND THEREFORE ON THE SINGLE MARKET?**

*Support for the country of origin principle*

Member States and Regulatory Authorities:

Several representatives of Member States authorities and Regulatory Authorities support the country of origin principle. Some are strongly opposed to any change in the country of origin principle.

One of them points however to interpretation discrepancies as to what constitutes content that "might seriously impair" under 18 year olds or to a lack of effective implementation of AVMSD in some Member States. However, a move to a country of reception principle would be a retrograde step. According to this respondent, the problematic issues should be dealt with by agreeing the appropriate framework of protection required across all EU Members States and by ensuring that the framework is applied adequately in all EU Members States.

Other stakeholders:

The great majority of industry underlines the proven value of this principle: it is fundamental to the successful functioning of the single market. It is a prerequisite for securing a common legal order across the EU. This includes many respondents from various stakeholder groups such as most Internet and network providers, digital companies, manufacturers and broadcasters, as well as cinema, film, TV producers and distributors, print and publishers as well as the advertising industry.

Some of the respondents including many manufacturers, network and digital operators as well as film, cinema and TV producers, are strongly opposed to any change in the country of origin principle. According to them, it would mean an irrevocable step back for the internal market, leading to lower regulatory standards and certainty, thus less cross border trade and consumer confidence, less consumer choice and negative impact on economic growth. Some digital companies are of the opinion that this principle should be in fact be reinforced as the EU requires more single market not less; therefore, what is required is better and more consistent application of country of origin principle and removal of fragmented rules. Some film, cinema and TV producers consider that a re-opening of the Directive is not needed at this time as the AVMSD contains sufficient flexibility to remain effective in the context of current market developments. In case the Directive was to be amended any changes should not undermine the country-of-origin principle.

Additionally, representatives of the advertising industry point out that the country of origin principle is crucial to the cross-border self-regulatory complaints system for advertisements in Europe.

Supporters of the country of origin principle acknowledge though the problems arising from its application, such as challenges presented by content derived from outside the EU or tensions between countries in which services are located and the ones in which those services are consumed.

However, they consider that these problems should be solved without undermining the country of origin principle, through either modifying the existing regulations to ensure proper competition, or ensuring that providers operating from outside of the European market are compliant with EU regulations or that consumers are informed that the provider operates under different territorial regulations.

One respondent considers it necessary to have a discussion on how to deal with cases when services established outside the EU have a significant market share and/or specifically target the EU market or specific Member States.

***Proposed solutions to the problems arising from the application of the country of origin principle***

*- Initiate reflection:*

Member States and Regulatory Authorities:

According to several Regulatory Authorities, the Commission should initiate a debate about the future functioning of the country of origin principle and how the existing mechanisms within the Directive can be made more effective.

Other stakeholders:

This is supported by a broadcaster and a representative of the digital industry, while another broadcaster calls for a reflection on the appropriateness of applying the principle of the country of consumption.

*- Changes from the country of origin principle to the country of destination:*

Member States and Regulatory Authorities:

The change to country of destination principle is supported by some Member States and Regulatory Authorities.

Other stakeholders:

This is also advocated by some respondents including from amongst network operators.

*- Departing only partially from the country of origin principle*

Member States and Regulatory Authorities:

The idea of departing partially from the country of origin principle is presented. This would only apply to rules of promotion of European works and more specifically, the measures taken by the Member States consisting of the contribution of the audiovisual content providers.

*- Country of destination only for services from outside the EU targeting users in the EU:*

Other stakeholders:

A network operator suggests that only for those services, clearly targeting the users in an EU Member State from outside of the EU, the country of destination principle remains necessary in order to ensure a coherent level of protection and safeguard the shared values throughout the EU as well as to avoid competitive disadvantages.

*- Other concepts to encompass providers from outside the EU*

Member States and Regulatory Authorities:

A Regulatory Authority suggests focusing on platform regulation. Breaking with the current country-of-origin principle - could have as a result - that for instance for the protection of minors or advertising the Member State where the platform provider is established would be responsible, and not the country where the content provider is established. The same is applicable for those content providers that are established outside of the EU.

The need to address competitive distortions for EU companies abiding by EU legislation vis-à-vis players outside EU rules is highlighted by some Member States and Regulatory Authorities.

Other stakeholders:

Similarly other stakeholders highlight the point that the AVMSD does not apply to providers who do not come under the jurisdiction of a Member State and does not cover content delivered over the Internet from countries outside of the EU. They argue that this could lead to competitive distortions for EU companies and therefore this situation needs to be addressed in order to ensure a level playing field. Representatives of network operators and broadcasters express this view.

Some respondents with focus on consumer protection suggest modifying the scope of the AMVSD in order to encompass providers from outside the EU.

An alternative suggestion is that in trying to better address jurisdiction issues for non-EU services, it would be important to establish a dialogue and try setting up agreements with outside countries to agree on a common approach.

*- Legislative approach*

Member States and Regulatory Authorities:

A Member State calls in this context for a legislative proposal by the Commission for regulating the dissemination and distribution of the audiovisual content of non-linear media services in EU Member States.

*- Better or stricter implementation of the country of origin principle*

Member States and Regulatory Authorities

There is still room for improvement as regards the cooperation procedure provided for in Article 4.2 AVMSD.

Other stakeholders:

The freedom of Member States to adopt more detailed or stricter rules according to Article 4 AVMSD is severely undermined by TV-channels outside the states' national jurisdiction that broadcast services directed towards their territories. Another view is that the current framework should be replaced.

*- Impact of deregulation*

Member States and Regulatory Authorities:

A Member State advocates a more relaxed regime. Experience in this Member State has shown that large commercial broadcasters that target the public in this Member State tend to conform to national standards, even if their head office is located elsewhere.

It is acknowledged that in a few countries, the gap between the country's own rules and the minimum set of rules will be greater.

Other stakeholders:

Another suggestion for relaxing current regulatory obligations is made with a view to strengthening competitiveness in global competition of EU companies.

**QUESTION 13: DOES INCREASED CONVERGENCE IN THE AUDIOVISUAL LANDSCAPE TEST THE RELATIONSHIP BETWEEN THE PROVISIONS OF THE AVMSD AND THE E-COMMERCE DIRECTIVE IN NEW WAYS AND IN WHICH AREAS? COULD YOU PROVIDE PRACTICAL EXAMPLES OF THAT?**

*No, there are no evident signs of the relationship between these instruments coming under strain as a result of convergence.*

Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities endorse this position.

Other stakeholders:

Especially parties associated with the rights management side of the audiovisual industry voice this view. They are joined therein by individual representatives of the electronic communications sector and equipment manufacturers. But broadcasters also support this viewpoint, as do representatives of the digital content sector and service providers spanning both electronic communications and audiovisual content provision.

Another group of respondents argues that the rules specific to the audiovisual sector contained in the AVMSD must be preserved. This includes for example some representatives of broadcasters and network operators. From the opposite perspective, various stakeholders including some network operators stress that the e-Commerce Directive remains fully appropriate to electronic commerce. Another observation is that a distinction in law between content providers and network operators as well as hosting providers needs to be retained.

*Yes, convergence is challenging scope determination under the two instruments.*

Member States and Regulatory Authorities:

Several Member States authorities and Regulatory Authorities agree that convergence is testing the relationship between the AVMSD and the e-Commerce Directive. A major concern is how to establish whether services fall within the scope of one or the other instrument. This is considered particularly relevant in the light of rapidly evolving marketing techniques. However, the possible likelihood that certain services might fall outside the scope of AVMSD application is considered a failure to suitably address the commercialisation of programme content and the problem of regulating distributors. The example of overlay advertising provides a particularly pointed example of the former.

At a fundamental level, a Member State raises the question of why media specific standards such as the ones set out by the AVMSD should not become equally applicable to all media. Another specific problem raised is the challenge of framing liability rules which would not incentivise arbitrage, through alteration of the service format.

Other stakeholders:

Some representatives of broadcasters and parties representing the film sector also agree that the boundaries between the AVMSD and the e-Commerce Directive are becoming increasingly difficult to determine.

Some mention rule conflicts. These are seen notably in the field of commercial communication and lead to considerable regulatory inefficiencies. This view essentially reflects a concern with asymmetric regulatory treatment of services that compete with each other. Consumer interest organisations evoke this fear, with difficulties of determining scope potentially leading to compromised consumer protection. A consumer organisation also mentions data protection concerns. Another issue might arise from the lack of suitable user information and liability for linked content. As a solution, one respondent envisages uniform information obligations across the AVMSD and the e-Commerce Directive. Finally, concerns are raised in respect of convergence allowing users to acquire content not allowed in their country of residence.

## **QUESTION 14: WHAT INITIATIVES AT EUROPEAN LEVEL COULD CONTRIBUTE TO IMPROVE THE LEVEL OF MEDIA LITERACY ACROSS EUROPE?**

*The EU could play a (greater) role in terms of funding and in the exchange of ideas*

### Member States and Regulatory Authorities:

Several Member States authorities and Regulatory Authorities agree that the EU could play a (greater) role in terms of funding and in the exchange of ideas in particular:

- through programmes such as the Safer Internet Programme and Safer Internet Centres in all MS, whereby it is suggested that the programme needed to be extended under CEF/BIK;
- programmes should not be only focused on audiovisual media but also on commercial value of personal data;
- In general, sharing of best practices is supported and the EU should annually publish a ranking by country regarding the level achieved in Audiovisual Communication/media literacy in EEA States.
- The EU could launch an annual contest to reward media literacy initiatives in different categories.

### Other stakeholders:

Similarly, many stakeholders agree that the EU could play a (greater) role in terms of funding and in the exchange of ideas. In particular through programmes such as the MEDIA programme and further integration in the Creative Europe programme; one respondent underlines that Creative Europe should not be only about film literacy; the Safer Internet Programme and Safer Internet Centres in all Member States and a possible funding of the Media Smart initiatives are also mentioned.

In funding such programmes, platform operators should also be taken into account and programmes should in particular put greater emphasis on raising awareness of the value of copyright.

Some stakeholders support the sharing of best practices. In particular more conferences and co-ordination of media literacy and education initiatives should be organised.

The EU should continue reporting on media literacy levels in the AVMSD implementation reports according to Art. 33 AVMSD.

The EU should make Europe-wide arrangements, such as arranging the notification by the regulator in the country of origin about the classification standards, or requiring that all ISPs offer opt-in or opt-out choice of all undesirable content.

Moreover, the EU should impose a legal obligation to ensure the provision of accessibility services for disabled persons as a pre-requisite for media literacy. The EU should incorporate the monitoring of child protection on connected media carried out by the Fundamental Rights Agency which is already working on children's rights.

### ***The EU should build on and support initiatives that already exist***

#### Other stakeholders:

The EU/Commission should build on and support initiatives which already exist. One respondent is keen to get information on the work progress and possible conclusions from the 2011 expert group on media literacy in schools.

### ***Positive assessment of current EU initiatives***

#### Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities acknowledge in a very positive way what has already been done at European level, for example through the various recommendations/communications on the protection of minors and media literacy.

#### Other stakeholders:

Other stakeholders from the broadcasting sector also judge what has already been done at European level very positively, for example through the various recommendations/communications on the protection of minors and media literacy. Some representatives of network operators underline the role of the CEO coalition. One respondent suggests that the current (self-regulatory) initiatives are successful and show that no further regulation is needed.

The role of self-regulation in a consumer-driven cross-platform world is underlined. A representative of the digital industry emphasises the variety of options and controls available to the user of digital devices and the Internet. Such increased control for the citizen-consumer gives a growing role to critical thinking and media literacy, and a lesser role for centrally set rules. A representative of network operators believes that media literacy should be left to technological progress itself, possibly in connection with collaborative projects with public institutions.

### ***Critical assessment of current "light" approach***

#### Member States and Regulatory Authorities:

A Regulatory Authority notes that despite the good measures, the implementation of educational measures cannot serve as a substitute for government regulation.

#### Other stakeholders:

Some organisations with focus on consumers have proved quite critical of the current approaches through self-regulation or the light-touch approach for on-demand services.

### ***Focus on initiatives at national or sub-national level***

#### Member States and Regulatory Authorities:

A Member State sees a main role for individual Member States. The EU should only be sharing best practices. Another public authority agrees that there would be no need for

new initiatives at EU level. Another Member State would favour information campaigns and targeted initiatives at national level, with EU actions such as the Safer Internet programme as a complement.

#### Other stakeholders:

Also, a broadcaster sees a main role for individual Member States with the EU only sharing best practices. Another broadcaster representative similarly agrees that responsibility for media literacy in schools and for adults should rest with Member States and local authorities (tailored approach). Another one suggests that locally tailored and targeted solutions generate the best results. Some representatives of network operators and the digital economy find that no one-size-fits-all approach would be possible. Another stakeholder notes that media literacy should primarily be addressed at a national level, with industry and government bodies working together, as appropriate, to deliver initiatives that reach people in the most effective manner. One respondent advises to foster coordination between EU and national institutions in order to launch education programmes focusing on the informed use of technologies available on the market.

#### ***Need for multi-level actions and partnerships***

##### Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities also see a need for action at various levels:

At school level, this could include changing the way ICT and computer science are taught and incorporating media/digital literacy in curricula as well as; adequate tuition technical equipment of schools.

At the level of teachers, media literacy programmes require specific continued training. At parents' level, possible measures to promote media literacy could include education sessions.

Finally, more than anything, partnerships (at national and EU-level) between the industry, public authorities, researchers, the education sector are advocated. Based on research and information, it is a task for governments, regulators and industry to provide clear information, education and tools for personal responsibility through which individuals and families can exercise informed choices.

##### Other stakeholders:

Other respondents also see a need for action at various levels.

At school level, this could include the creation of EU courses on media literacy and news media. The way ICT and computer science are taught in schools should change and media/digital literacy should be incorporated in curricula, including coding courses and awareness of copyright and data protection. An adequate technical equipment of schools should be assured.

At the level of teachers, targeted investment into teacher training and career opportunities in media education in national education systems should be foreseen.

At industry level, publishers are already engaged in many media literacy programmes

focused on schools and adults. Also a network operator mentions that it is engaged in media literacy initiatives. The role of industry and possibly of self-regulation associations is emphasised. Some broadcasters underline that they already play a role.

However, one stakeholder believes that any media education should be independent from media and Internet operators and will not replace public education.

Some consider that the primary responsibility lies with parents. Therefore, raising parents' awareness is particularly important (e.g. parental thematic evenings).

Concerning the public policy level, according to some network operators, initiatives should be incentivised and supported by public funding and public campaigns.

Another stakeholder mentions that there should be project funding on organizing media literacy activities, creation of toolkits, raising the public awareness, organizing seminars on the topics and even creative advertisements on the topic.

Partnerships (at national and EU level) between the industry, public authorities, researchers and the education sector are advocated. It is also noted that only a holistic, complementary approach to the challenges of Internet literacy will be effective.

### ***Other suggested initiatives***

#### Member States and Regulatory Authorities:

Some propose development of positive content (high quality content aimed at children).

#### Other stakeholders:

Some point to the need of ensuring enough spectrums to allow broadcasting to remain innovative through interactivity which in turn can improve levels of media literacy.

There is the idea of a public service platform/social networks (no advertising, no digital tracking).

Others suggest establishing "seals of compliance" at European level, similar to trust marks for e-commerce or online financial services, or like the PEGI standard.

### ***Broader definition of media literacy***

#### Member States and Regulatory Authorities:

A Member State notes that media literacy should also promote entrepreneurship and digital skills and active engagement in new platforms. According to a Regulatory Authority, it should contain knowledge about how to use new technologies and devices but also understand the associated risks and opportunities. Emphasis should be put on socially disadvantaged groups.

#### Other stakeholders:

More generally, as underlined by many stakeholders media literacy can cover a range of different aspects relating to consuming, understanding, evaluating and creating media. A representative of the digital economy underlines that this should be about "digital literacy" more than "media literacy". Media/digital literacy can also target various audiences: children, adults, parents, teachers etc. Persons with special needs should

increasingly be taken into account. Emphasis should be put on socially disadvantaged groups. Campaigns and actions based on peer-based education initiatives should be given priority, especially for the young.

**QUESTION 15: SHOULD THE POSSIBILITY OF PRE-DEFINING CHOICE THROUGH FILTERING MECHANISMS, INCLUDING IN SEARCH FACILITIES, BE SUBJECT TO PUBLIC INTERVENTION AT EU LEVEL?**

***Introductory remarks***

As a preliminary remark, it should be noted that respondents interpret the question in different ways. Some of the respondents adopt a very broad understanding of the question, while some of them restrict it to certain policy areas like competition law, data protection or network neutrality.

***Effects of filters on media pluralism***

Member States and Regulatory Authorities:

A number of Member States authorities and Regulatory Authorities consider that pre-filtering of content may potentially constitute a threat for media freedom and pluralism, at least in certain cases.

Other stakeholders:

Many respondents consider that pre-filtering of content may potentially constitute a threat for media freedom and pluralism. Many of those respondents suggest concrete actions to be undertaken to mitigate such threat. Those responses are described in detail below.

However, some respondents consider that there is no need / no evidence for public action. They argue that that such pre-filtering may be useful in the era of the Internet and the abundance of content. Moreover, they argue that there is no sound scientific proof that pre-filtering restricts access to different types of content and such pre-filtering helps citizens at the end to access different types of content which are of interest to them. Also, certain respondents actually support filtering which may be needed in certain cases, as demonstrated by entities with focus on accessibility.

***General support for actions***

Member States and Regulatory Authorities:

Some of the Member States authorities and Regulatory Authorities highlight the need to take action, without specifying in detail at which level it should be taken. Other Member States authorities and Regulatory Authorities support different possibilities for the specific EU intervention in this respect. One Regulatory Authority comments that the potential for public intervention should be maintained.

Other stakeholders:

Some respondents support specific EU intervention. The most recurrent suggestions are described below.

## ***Suggestions for targeted actions***

### Member States and Regulatory Authorities:

- Transparency: The key is to ensure transparency regarding the functioning of pre-filtering mechanisms, in particular for search engines.
- Media literacy: Public intervention should focus on improving media literacy so that citizens are able to use properly or switch off existing filters. At the same time existing legal tools provide appropriate safeguards for the protection of media freedom and pluralism.

### Other stakeholders:

- Transparency:

This is also mentioned as one of the key elements by various stakeholders, including some representatives of broadcasters as well as network operators and an organisation with focus on viewer interests.

- Net Neutrality: Several respondents consider that media freedom and pluralism could be enhanced in the context of the analysed question by ensuring full network neutrality.
- Separation of search engine activity: One respondent asks for different possibilities for the separation of search engine activity and commercial activities when exercised by single entity.

## ***Sufficient current legal framework***

### Member States and Regulatory Authorities:

A Member State comments that *ex ante* regulation of the market by proper application of competition law is sufficient to mitigate any potential threats to media freedom and pluralism.

### Other stakeholders:

This opinion is also shared by a number of stakeholders, including some network operators, representatives of broadcasters and print. One respondent suggested that such issue is already addressed by the data protection rules.

## ***No support for public intervention***

### Member States and Regulatory Authorities:

Some Member States authorities opine that the EU should be particularly attentive to any action because of the issue of EU/MS competences and because of different cultural approaches. One Member State indicates that it should be mostly for technical community and for market forces to address any potential threats to media freedom and pluralism.

### Other stakeholders:

One respondent argues that any public intervention will not be able to regulate properly such fast-developing market. Another one advocates self-regulation for this reason.

The need for compelling evidence for intervention is noted. Another respondent warns that any statutory action may turn out to restrict access to content.

**QUESTION 16: WHAT SHOULD BE THE SCOPE OF EXISTING REGULATION ON ACCESS (ART. 6 ACCESS DIRECTIVE) AND UNIVERSAL SERVICE (ART. 31 UNIVERSAL SERVICE DIRECTIVE) IN VIEW OF INCREASING CONVERGENCE OF LINEAR AND NON-LINEAR SERVICES ON COMMON PLATFORMS? IN A CONVERGENT BROADCAST/BROADBAND ENVIRONMENT, ARE THERE SPECIFIC NEEDS TO ENSURE THE ACCESSIBILITY AND THE CONVENIENCE TO FIND AND ENJOY 'GENERAL INTEREST CONTENT'?**

*Views stressing the need to further harmonise regulation on conditional access and other facilities (Article 6 AD: EPG, APIs), must carry (Article 30 USD) and to introduce new regulation for findability of general interest content*

Member States and Regulatory Authorities:

- *Article 6 AD:*

A number of Member States authorities and Regulatory Authorities ask to revise the scope of Article 6 AD and to conceive it as broadly as possible, so as to cover regulation of conditional access systems (hereinafter: CAS) and Electronic Programme guides (hereinafter: EPG) to cover any convergent media service.

- *Article 30 USD:*

A number of Member States authorities and Regulatory Authorities propose to widen the must-carry obligation so as to comprise all services of general interest and in particular non-linear services. A Regulatory Authority indicates that the question whether widening the must-carry rules to cover also PSBs on-demand players is to be examined at national level. Another asks to complement the regulation of must-carry with a must-offer obligation.

- *Findability:*

A number of Member States authorities and Regulatory Authorities support introducing regulation in order to ease the findability of content of general interest.

However, some of them relativize their position. A Member State authority indicates that its submission does not have the aim to reflect a governmental position, whereas a further submission is indicating that although there would be a need for regulation on findability, this would not be urgent.

One respondent supports a widening of the scope of Article 6 AD and Art. 31 USD to include not only non-linear audiovisual media services, but also any type of non-linear services (e-commerce). It indicates that the rationale behind the access under Article 6 AD would be to counterbalance the gatekeeper role of an operator due to his technical control over facilities. Based on the same rationale, Member States should have the possibility to impose access, must distribute, findability and must-carry obligations in relation to any service (all information services) and facilities (EPG). Regulation should extend to manufacturers, application providers, website for sharing video, social media, and online research engines, independent from an SMP-finding. Harmonisation at EU level is supported, although the view is expressed that anyway it should be possible to implement regulation with this scope at a national level.

Another position submitted during the consultation concludes that it is essential that measures on prominence are taken to ensure that audiences are able to discover and access public service content easily and that regulation for EPGs and prominence should be updated. The EU framework should enable Member States to implement those adaptations.

#### Other stakeholders:

Some stakeholders, including some representatives of public service broadcasters, entities with focus on accessibility and entities with focus on viewers, either support a widening of the scope of Article 6 AD and Art. 31 USD as well as findability to the maximum conceivable level or support widening the scope. Another respondent, although advocating the appropriateness of the status quo, believes that changes should be made to continue safeguarding the awareness of the consumers to specific content.

#### *- Article 6 AD:*

Some broadcasters stress the need to regulate access to EPGs. Furthermore, it is noted that there is a need for the regulatory authorities to set standards for screens, to be applied by manufacturers in order to ensure effective choice of users.

#### *- Article 30 USD:*

A number of stakeholders, including some representatives of broadcasters call for widening the scope of must-carry obligations to cover also non-linear. One respondent favours an extension of must-carry obligation to radio services, together with regulation on findability.

#### *- Findability:*

A number of respondents, including but not limited to some broadcasters, supports the introduction of a "must be found" obligation in relation to PSB/PSC and sees a need for regulation in order to ensure findability of PSBs. One of them thinks that co-and self-regulation might be sufficient to ensure findability of PSBs. Another respondent, although supporting the introduction of rules on diversity, non-discrimination and neutral listing, believes that rules on findability should be established via co- and self-regulation. Views stressing the need to further examine the need to harmonise regulation on conditional access and other facilities (Article 6 AD: EPG, APIs), must carry (Article 30 USD) and to introduce new regulation for findability of general interest content

#### Member States and Regulatory Authorities:

Regarding all three above issues (access, must-carry, findability), some Member States believe that an extension of the scope of regulation might become necessary, subject to examination. Others point to the need to adapt the regulatory framework to the new convergent environment without however taking position whether and which assessments should be carried out.

Regarding specifically:

*- Article 6 AD:*

Some representatives of Member States authorities and Regulatory Authorities ask the Commission to further examine the need to broaden the access rules to adapt them to the convergent services. Another Regulatory Authority asks for a review of EPG licence conditions, for re-defining the scope of public service content, to study how interfaces handle prominence (audience size, genre-based), to review the regulated coverage of EPG, and to study enforcement of prominence obligations (jurisdiction).

*- Article 30 USD:*

Some Member States authorities and Regulatory Authorities see a need to further examine a possible widening of the scope of must-carry obligations to cover non-linear services. One of them indicates that enlarging the must-carry obligation to other networks than those covered by the current USD is could be discussed. Another respondent submits that extending the must-carry obligation to closed networks would be an option.

*- Findability:*

One Member State stresses that regulation on findability, if introduced, would have to comply with detailed conditions based on pertinence, efficiency, proportionality transparency and non-discrimination.

Other stakeholders:

*- Article 6 AD:*

One respondent calls on the Commission to safeguard conditions of fair competition for the press in the event of an introduction of new rules for EPG to ensure prominence for public service content.

*- Article 30 USD:*

One respondent asks for carrying out an impact assessment, should the need arise to widen the scope of the must-carry obligation. Another one sees the need to examine the imposition of a must-carry obligation in relation to radio apps.

*- Findability:*

Some respondents see the need to examine the introduction of a legal status and rights of programme providers' vis-à-vis search engines and the need to introduce rules on search neutrality. One respondent stresses the importance of "gateway neutrality" in order to guarantee findability as part of net neutrality. Other respondents including an organisation with a focus on consumer protection point to the need to ensure net neutrality and transparency for end-users. In this context a broadcaster has expressed support for the Commission's proposal on Open Internet.

***Keeping the status quo: Views indicating lack of need to expand regulation on conditional access and other facilities (Article 6 AD: EPG, APIs), must-carry (Article 30 USD; views opposed to introduce new regulation for findability of general interest content)***

Member States and Regulatory Authorities:

A number of Member States authorities and Regulatory Authorities believe that the current rules on facilities and must-carry are sufficient and that there is no need to introduce regulation to ensure findability.

A Regulatory Authority indicates that the means to access content in EPG should ideally be fully shaped by the end-user and that the range of programmes listed should not be decided by EU- or national regulation.

Other stakeholders:

According to some, there is no need to change rules regarding any of those issues.

Regarding findability, one stakeholder indicates that there is no need to impose "must-be-found" obligations and that imposing obligations on manufacturers would impede market development.

***Views stressing the need to remove/reduce regulation on conditional access and other facilities (Article 6 AD: EPG, APIs), must-carry (Article 30 USD).***

Member States and Regulatory Authorities:

No Member States or Regulatory Authorities supports removing regulation.

Other stakeholders:

Regarding Article 30 USD, some respondents take the position that convergent TV sufficiently enables consumers to access content of their choice and that therefore; the must-carry obligation would have lost its legitimacy.

***Further issues raised by the respondents***

Member States and Regulatory Authorities:

Some respondents ask to examine the need to complement the regulation of must-carry with a must-offer obligation. One of them indicates that the introduction of a "must deliver" obligation on distributors should be made subject to an impact assessment, including the scope and conditions of such an obligation.

A Regulatory Authority stresses that regulatory asymmetry for linear and non-linear might create competitive distortions. It asks to apply *ex ante* competition powers also to non-linear services and to study an extension of regulatory powers to *ex ante* intervention in order to address competition problems as it is in the case in the telecom sector, without however, necessarily applying the market analysis procedure which is applicable to telecoms to audiovisual media services.

Another Member State indicates that it has no position on those three issues because the working group established to study those issues has not formulated an opinion yet.

Some Member States authorities and Regulatory Authorities describe the current framework or do not take position.

One submission only comments on net neutrality and stresses the importance of access to the open Internet via all platforms.

#### Other stakeholders:

Some respondents stress that a must-carry obligation, if kept, should be shaped reciprocally, i.e. also comprise a must-offer obligation on content providers. Others note that financial compensation received by network operators for must-carry obligations should be regulated; or they ask to further examine the issue of compensation.

Some stakeholders request linkage of must-carry obligations with a universal service type of obligation to offer a connection with a minimum bandwidth.

An organisation with focus on consumers emphasises the need to ensure consumer choice.

One association provides a list of measures to be taken in order to support SMEs in the media sector, covering inter alia, the introduction of a diversity obligation and a request for tax alignments of offline and online services.

Some respondents describe the new competitive conditions for broadcasters/advertisers in the new connected TV environment; they do not however take position as to whether this would require changes in the EU framework.

**QUESTION 17: WILL THE CURRENT RULES OF THE AVMSD REGARDING COMMERCIAL COMMUNICATIONS STILL BE APPROPRIATE WHEN A CONVERGED EXPERIENCE PROGRESSIVELY BECOMES REALITY? COULD YOU PROVIDE SOME CONCRETE EXAMPLES?**

***Qualitative rules should remain applicable transversally***

Member States and Regulatory Authorities:

This is the view shared by several Member States authorities and Regulatory Authorities. They point to uniform protection of consumers, children, young people and minorities. A Member State deems that a reflection should be launched on the extension of the qualitative rules to platforms that are not covered by the AVMSD but that provide audiovisual content, in order to guarantee that the principles of identification, non-discrimination, human dignity public health and protection of minors are respected whatever the platform.

Other stakeholders:

Several stakeholders agree that qualitative rules should remain applicable transversally. However, some suggest more co-regulation given the growing divergences between forms of audiovisual commercial communication. Another suggestion is that the rules about advertising in children's programmes, religious services and rules for block advertising (advertising blocks) should be made similar for linear and non-linear.

***Qualitative rules should NOT be applicable transversally***

Other stakeholders:

Some stakeholders from the print and publishing sector underline that qualitative rules are inappropriate, in particular for non-linear, as this interferes with media freedom.

***Views on specific qualitative rules***

Member States and Regulatory Authorities:

Some point to specific rules that should be adapted, e.g. rules on product placement and sponsorship are artificially separated and difficult to apply. Similar observations are made for self-promotion and cross-promotion. Teleshopping rules are deemed too detailed. The different categories of audiovisual commercial communication are considered too detailed.

A Member State suggests that the marketing of non-recommended foods for children should be controlled more effectively and restrictively. This point is also to be clarified according to one Regulatory Authority, as well as specific rules for the content of advertising in children's programmes.

### ***Same core principles should (not cease to) apply in the convergence environment***

#### Member States and Regulatory Authorities:

The principle of identification and distinction between editorial and advertising content has been recognised as remaining/being increasingly important in a time of convergence. Other important principles are the insertion of advertising and the independence of content as well as the protection of minors which should be harmonised with the Unfair Commercial Practices and Misleading Advertising Directives.

The concept of "undue prominence" should be crucial in determining whether there is surreptitious advertising.

Some advocate a basic set of principles that should apply to all audiovisual media services with the above mentioned issues as the core.

Others suggest a new set of rules including new forms of advertising. A two-level regulation is required: a directive and additional interpretative guidelines agreed at the EU level within the frame of a reinforced Group of Regulatory Bodies for Audiovisual Media Services.

#### Other stakeholders:

Many stakeholders also point to the principle of clear separation/identification between editorial and commercial content as being the main element in a converged environment where the sources and intentions of commercial messages are not always easy to identify. This includes some representatives of the broadcasting sector as well as viewers' interests. A stakeholder from the advertising sector strongly subscribes to taking a consistent approach based on the enduring principles that advertisements are legal, decent, honest and truthful. Another stakeholder with focus on protection of minors points to immersive marketing techniques that can be challenging for minors. Some representatives from the broadcasting sector underline the importance of content integrity (see link to Q19 on overlays). However, a respondent from the advertising sector argues that there must not necessarily be spatial separation of advertising and editorial content. Another stakeholder from the broadcasting sector considers that the principle of separation should be replaced by a requirement of recognisability and differentiation (and any additional advertising restriction should also take into account financing issues).

For one stakeholder with a focus on consumer protection, the main aspect of convergence is the provision of personalised content offers to the consumer. Therefore data protection rules are very important in this regard. Self- and co-regulation can help. However, this respondent is quite critical of the Online Behavioural Advertising initiative undertaken by the Interactive Advertising Bureau. Another respondent raises concerns regarding "TV cookies" and data protection rules, in particular with regard to minors. A stakeholder from the digital sector is of the opinion that personalisation and filtering helps the citizen / consumer to find relevant content.

### ***Quantitative rules for linear services should be softened or made more flexible***

#### Member States and Regulatory Authorities:

Increased convergence should not result in an elimination of non-essential restrictions

according to a Member State. For another Member State, some flexibility should be envisaged for broadcasters given convergence and the amount of resources needed for the enforcement of those rules.

A Member State argues that the transition to convergence is far from complete, and the exact destination is currently hard to ascertain. The rules must remain flexible and as such, a flexible self-regulatory framework is the optimal approach, to enable the best outcomes both for industry and consumers. A Regulatory Authority notes that the future regulation of commercial communications should be based on a set of high-level principles derived from EU legislation.

For some, quantitative rules in linear services should be reviewed. One respondent argues for further deregulation. Others note that, in the medium term they will make increasingly less sense. The relevant criterion should be the number of products advertised rather than the length of the advertisements.

A Member State suggests that, changes to the current regulation should be considered, as increased media supply does not necessarily require the current level of regulation. According to another Member State, the rules could be applied more flexibly, given the change in service characteristics and consumer behaviour.

#### Other stakeholders:

Some stakeholders would loosen the rules to open the door for the evolution of business models and consider that commercial communication should be left to competition (except the issue of advertising targeting minors). One stakeholder suggests that the AVMSD should focus less on operational details and have a principle-led approach to allow some experiments in broadcasting. Another respondent believes that rules on commercial communications should allow various services to be displayed on the same screen in the interest of innovative services and users' convenience.

For another respondent, both de-regulation and self-regulation would be welcomed to ensure a level playing field between current pay TV models and platforms. A stakeholder from the digital sector notes that an adequate deregulation and simplification of rules should be achieved (quantitative rules should be relaxed, content-specific regulation should be reviewed, protection of minors rules should only set minimum standards). For a stakeholder from the broadcasting sector, the fact that linear TV news broadcasts may not be interrupted by advertisements in the first 30 minutes could be an area for de-regulation. There needs to be a review of the detailed commercial communications rules (e.g. the application of the 20% limit to an hour rather than over a longer period, spot advertising, and product placement). Other respondents from the broadcasting sector note that the 12-min rule will be more and more difficult to monitor in an environment where linear and non-linear services will increasingly compete on a single screen or where users seamlessly switch from linear to non-linear services.

Some respondents from the advertising sector argue for de-regulation of the quantitative rules, allowing broadcasters to reap a better return from their investments and not to be disadvantaged compared with online services. Doubts about the need for time limitations to commercial communication are shared by other respondents.

Some stakeholders point to self- and co-regulation (see link to Q18): encouraging self-regulation for areas not covered by the Directive to prevent displacement of advertisers

towards areas not subject to regulation; tackling future changes in advertising; the co-regulation model is deemed effective in both linear and non-linear services or highlighted specifically for a non-linear approach.

***More generally: convergence requires a review or a harmonisation of the rules (with a focus on the consumer's experience)***

Member States and Regulatory Authorities:

Some respondents require a convergence of the different levels of regulation, for example in terms of quantitative advertising rules.

For another respondent the distinction between linear and non-linear services as a criterion for regulation has become obsolete and leads to significant, regulatory difficulties. A Member State notes that convergence will require a review of the rules, striking the right balance between the interests of industry and the interests of the consumer.

Other stakeholders:

Many stakeholders are rather in favour of some kind of harmonisation, of a level playing field between broadcasting, the Internet and/or different platforms.

For some stakeholders, convergence should however not be synonym for an alignment with the lowest standards. Respondents note that the regulation level should be the same where the content from the perspective of the audience is comparable and that it should be based on consumers' expectations. One stakeholder explains that regulation should be appropriate to each context as consumers understand those contexts.

***Advertising rules should be tightened, for non-linear players in particular***

Member States and Regulatory Authorities:

Some respondents propose ways to export/adapt the quantitative limits to the non-linear environment: only the viewing space should be regulated (ex: audiovisual commercial communication cannot account for more than 20% of the programme duration), it could be envisaged to regulate that 30% of the page is dedicated to the viewing space or to make full screen viewing mandatory.

Other stakeholders:

One stakeholder argues that TV advertising rules must be made more stringent.

Others are in favour of tightening the on-demand rules, mainly consumer organisations. Quantitative rules should also apply to non-linear.

***The (geographical) scope of the rules should be redefined***

Member States and Regulatory Authorities:

A Member State proposes that necessary adjustments should also deal with services that are not currently covered by the scope of the AVMSD (e.g. advertising on websites). Another respondent is not in favour of tightening of the rules on television advertising and commercial communication, but suggests that all audiovisual media services should

be covered as the distinction between linear and non-linear is outdated. One Member State highlights the fact that on-demand services established abroad do not contribute to the financing system. The revenues generated by buying advertising spots in a given Member State are not reinvested in the market of consumption. This distortion could jeopardise national actors and the question of geographical scope is crucial.

Other stakeholders:

For one stakeholder from the broadcasting sector, the audiovisual media services definition should include set-top-boxes. Another stakeholder underlines that advertising on the internet can be more intrusive than in linear services (pop-up or pre-roll ads that you must watch before watching the programme).

***No changes are needed in the advertising rules***

Other stakeholders:

In general, several stakeholders point out that no changes are needed, as the AVMSD provided and still provides a sufficient framework.

A network operator explains that, the tiered approach remains valid but regulatory divergence should be avoided as regards audiovisual commercial communications.

For another network operator, the light-touch regulation remains valid for non-linear services due to the greater control of the user.

Some respondents from the broadcasting sector are favourable in principle to a system of graduated regulation as it currently exists in the AVMS Directive. One of them highlights that the system in place for TV broadcasting should remain fair compared with the "unregulated" ISPs.

Some stakeholders from the digital sector do not consider any urgent need for a change in the current rules. General light touch principles should continue to apply where the user is able to exercise much more control. In future, with convergence, regulation will have to be revisited to see if or how much of it may need to be reduced.

Some stakeholders from the print and publishing sector consider that specifically the 12-min rule should remain in place to allow a fair distribution of advertising between different media.

Another stakeholder considers that the current rules on audiovisual commercial communication remain broadly workable; however, if the Commission does decide to intervene, then it is essential that it does so in a way which does not hamper the development of innovative advertising services. A broadcaster underlines that the different regulatory rules which apply to commercial communications included in linear and non-linear services have not raised competitive concerns. Furthermore, there are some concerns about a possible interpretative communication being overly restrictive.

## *More time for reflection needed*

### Other stakeholders:

A representative of consumer interests underlines that rules on commercial communications in the AVMSD are still relevant but there should be further assessment as to whether linear and non-linear services targeting EU consumers should be subject to the same rules. Similarly, a representative from the broadcasting sector notes that there may also be a need in the longer term to reflect on the suitability and sustainability of the AVMSD rules on commercial communications in order to safeguard editorial independence and content integrity. In this context, there will be a strong case for exploring how a set of key principles based on fundamental public interest objectives such as the protection of minors and human dignity should apply to all audiovisual commercial communications (regardless of whether these services fall within the scope of the AVMSD), with more detailed rules for linear and non-linear. For a representative of manufacturers the distinction between linear and non-linear services loses importance from the user perspective. It is for the legislator to check whether different levels of advertising rules are required. A representative from the advertising sector considers that it is too soon to guess in which direction the process of convergence will evolve. Another stakeholder comments that it is too early to determine what consumer expectations might be in respect of changing advertising techniques.

### *Other ideas*

#### Member States and Regulatory Authorities:

- Weakening the quantitative rules would not be appropriate.
- Two possible avenues: more flexibility in certain areas (e.g. removing the rule of 30 minutes between advertising interruptions) or on the contrary imposing new rules on on-demand and online services.

#### Other stakeholders:

- The issue of advertising supplied through second or third screens should be considered in future. In case this advertising is linked to linear services it should be considered whether this counts towards the 20% per hour limits of the AVMSD.
- The need for a balance between consumer protection and innovation capacities of the market is highlighted.
- Stronger measures to protect minors (no interruptive advertising during broadcasting for children, a mandatory ban on advertising for food that is unhealthy because it contains excessive sugar, salt, fat).
- A representative of viewer interests suggests a tightening and co-ordination at the EU level of the provisions to protect consumers within the e-Commerce Directive, the Unfair Commercial Practices Directive as amended in 2009, and the Audiovisual Media Services Directive. Product placement needs to be fully disclosed even if the programme has not been produced by the broadcaster.

Service providers should be required to provide the user of a connected TV set with a full and proper on-screen and audio disclosure of any change of jurisdiction affecting their access to television programming including a video-on-demand service, or a link to the purchase of associated goods or services. In addition, any link to a commercial communication or pop-up located within a programme or an online game should only lead to advertisements appropriate to the classification of that particular programme.

- A representative of consumer interests advocates more powers for regulators and to the inspection bodies to enforce legislation and establishing administrative penalties (fines) and civil penalties allowing compensation to consumers in the event of damage.

**QUESTION 18: WHAT REGULATORY INSTRUMENTS WOULD BE MOST APPROPRIATE TO ADDRESS THE RAPIDLY CHANGING ADVERTISING TECHNIQUES? IS THERE MORE SCOPE FOR SELF/CO-REGULATION?**

***General emphasis on positive aspects of self-/co-regulation***

Member States and Regulatory Authorities:

Some representatives of Member States and Regulatory Authorities consider that there is more scope for self- and co-regulation regarding the different forms of commercial communications. In addition to self- and co-regulation, one Member State also favours a constructive dialogue between authorities and stakeholders. Another one notes that the current AVMSD promotes self- and co-regulatory approaches at national level and this approach has proved its worth in the field of advertising. A Regulatory Authority explains that legally binding instruments are necessary but self- and co-regulation mechanisms can help in the context of a fast changing environment.

Other stakeholders:

Most stakeholders are in favour of self- and co-regulation. They suggest that self- and co-regulation are essential, given the need to keep up and remain flexible in such a fast-changing environment. One respondent highlights that the current AVMSD approach to self-regulation should continue.

***Self- and co-regulation could be particularly efficient in certain areas***

Other stakeholders:

For some stakeholders, self- and co-regulation could be particularly efficient in certain areas. One respondent explains that self- and co-regulation have proven successful in fields where statutory regulation has its limitation, e.g. in addressing not only media or e-commerce providers governed by European legislation but also those from abroad. Another stakeholder welcomes a self-regulatory approach to advertising, especially for targeted ads and personalised browsing recommendations

***Focus on self-regulation***

Member States and Regulatory Authorities:

One Member State states that it benefits from a healthy and successful advertising sector, which is underpinned by exemplary and successful self-regulation. The regulatory regime must remain flexible as convergence is not yet complete. Another Member State gives the example of the industry self-regulatory system for online behavioural advertising. A public authority suggests maintaining - with regard to the environment surrounding the viewing space of audiovisual media services - a common set of qualitative rules and use self-regulation for the rest.

#### Other stakeholders:

Similarly, many stakeholders advocate this approach. It is perceived as a practice that already works well, leading to quicker, more flexible and less complicated rules in a changing environment while at the same time addressing consumers' needs and concerns. Any opportunity the Commission can explore to initiate discussions which might lead to both de-regulation and self-regulation would be welcome. Some stakeholders note that any regulation in this area should focus on high level principles/ general framework legislation and leave room for self-regulatory approaches.

#### ***Focus on co-regulation***

##### Member States and Regulatory Authorities:

A Regulatory Authority considers co-regulation as sufficient if it continues the existing balance between external and internal regulation. Another Regulatory Authority cites the UK co-regulatory model. For another Regulatory Authority, co-regulation mechanisms could be used for advertising techniques used in audiovisual media services, under the editorial responsibility of the provider but not as part of the audiovisual content. Another Regulatory Authority notes that it engages continually with stakeholders around the implementation and interpretation of these codes and commits to regularly reviewing the codes to ensure they reflect current realities and are fit for purpose. Respondents' comment that the evolution of techniques is very rapid and that is why flexible instruments are needed (e.g. observers, permanent dialogues); furthermore, competition from OTT calls rather for co-regulation than for imposed regulation.

Other respondents consider co-regulation can be a good solution, as self-regulation is neither satisfactory nor are stakeholders interested in it. Similarly, based on a specific regulator's experience to date, a purely self-regulatory model is not sufficient to deliver the expected results in the field of SMEs. Therefore co-regulation is preferable. Similarly, one Member State explains that, although there is scope for more self- and co-regulation, the most appropriate tool is deemed to be co-regulation (issues that need to be regulated include new advertising techniques, the means to identify them, surreptitious commercial messages and their broadcasting during sports events etc.).

Other respondents note that it is essential that different regulatory instruments coexist, including self- and co-regulation.

##### Other stakeholders:

Some stakeholders emphasize the role of self- and co-regulation in addition to binding EU/State regulation. One respondent notes that regulation in sensitive advertising areas as well as regulation of public service broadcasters should continue to be proportionate. A stakeholder from the advertising sector recognises that self-regulation should not be seen as a replacement for general legislation with which it has a complementary role. It is important that the legal backstop is a real one and is adequately controlled and implemented for all players on the market. Another stakeholder from the broadcasting sector points to co-regulation possibilities for certain specific areas.

For a stakeholder from the digital sector there could be a better implementation and respect of the principles of making advertising clearly recognisable and distinguishable (referring to search engines). Self- and co- regulatory initiatives could be developed where necessary.

### ***Examples mentioned as best practices***

#### Other stakeholders:

Most UK stakeholders point to the UK regulatory system as an example.

Stakeholders also give the example of the OBA - online behavioural advertising initiative. Another respondent also cited the EU Pledge. Some German respondents give the example of the Deutscher Datenschutzrat Online Werbung (DDOW).

### ***Focus on de-regulation***

#### Member States and Regulatory Authorities:

A Member State proposes that legislation should be restricted to the essence: a clear and publicly relevant distinction between editorial content and advertising, and perhaps additional restrictions for certain genres. Additionally, codes of conduct remain desirable and are endorsed by both the companies that advertise and the media themselves. A Regulatory Authority is in favour of less detailed rules on audiovisual commercial communications. Another Member State suggests that concerns of deregulation should take into account considerations about services that are not currently covered by the scope of the AVMSD (e.g. advertising on websites).

### ***Emphasis on negative aspects of self-/co-regulation***

#### Other stakeholders:

Most stakeholders representing consumers' interest (particularly minors) are quite critical of the use of more self- and co-regulation. Numerous analysis of the method of self-regulation has shown to be ineffective. This calls for evidence-based methods, quantifications and better elaboration of norms in the legislative documents, especially when protecting minors and vulnerable groups. Similarly for one stakeholder, self-regulation has not proved at all effective (e.g. as regards advertising aimed at children). Another one highlights that it does not work for child protection. A respondent with a focus on consumers specifically argues for regulation (and not self- and co-regulation). According to a respondent with focus on child protection, self-regulation per se has failed to regulate food marketing to children, but self-regulation can be coupled with hard law. A respondent from the broadcasting sector indicated that the German market relies on the advertising association and its codes (ZAW) but these self-regulation mechanisms remain clearly limited. Another broadcaster notes that, while instruments of self - and co-regulation may be useful in industries characterized by a limited number of actors, the question arises about the efficiency of such measures in areas where there is a very important number of market participants.

### *Focus on data protection*

#### Other stakeholders:

For a stakeholder with a focus on consumer protection, the main aspect of convergence is the provision of personalised content offers to the consumer. Therefore, data protection rules are very important in this regard. Self- and co-regulation can help but this respondent is quite critical of the OBA initiative by the Interactive Advertising Bureau.

### *Other issues*

#### Other stakeholders:

- An update of the Interpretative Communication could be useful.
- If the Commission feels that action is necessary, then it may wish to consider further consultation or a stakeholder dialogue to establish what future regulatory initiatives are necessary. Product Placement rules should be reinforced so that product placement does not distort the creative process.
- It would be helpful, when asking such questions, for the Commission to be more specific. What does it mean by “address”? What problems would be “addressed”? What public policy goal would be pursued?

## **QUESTION 19: WHO SHOULD HAVE THE FINAL SAY WHETHER OR NOT TO ACCEPT COMMERCIAL OVERLAYS OR OTHER NOVEL TECHNIQUES ON SCREEN?**

*Users should have the final say in any case, regardless where the overlays originates from*

### Member States and Regulatory Authorities:

Amongst Member States authorities and Regulatory Authorities, there is the view that the final say over what appears on the screen, belongs to the users, without distinguishing whether the overlays or other novel advertising techniques originate from 3<sup>rd</sup> parties (other than the original content provider) or from user actions (e.g. when arranging different content on the screen such as two types of content at the same time, use of social media and emails etc.). A Regulatory Authority points out that users should always remain in control of commercial communications that can intrude in the programmes but stresses that they must be clearly identifiable. One Member State considers that it is important to respect the viewer's choice and that the existing technology enables such possibilities. Another Member State comments that users should be able to exclude overlays and other novel techniques if they feel that these developments prevent them from watching the programme comfortably or compromise the physical, mental or moral development of minors.

### Other stakeholders:

Some stakeholders also find that the users should be the ones to allow what appears on their screens, in particular consumers/citizen-oriented stakeholder entities. Some highlight that it is all the more important that the users should remain in control and be given choices as regards targeted and personalised advertisement. Other stakeholders support this stance, without making a distinction between commercial overlays and user-initiated scaling/arrangement of content. Some representatives of the cable sector also put the user in charge of the final control over the screen. According to one of them, content and platform providers should work together to create an appealing offer to the consumers, who would have the final say on what is on screen.

*Users should have the final say in certain cases*

### Member States and Regulatory Authorities:

Some other Member States authorities and Regulatory Authorities consider also that the decision whether or which commercial insertions take place on the screen should be made by the user, even if such overlays originate from the original content provider. A Regulatory Authority notes that in case of overlays or the use of other techniques by 3<sup>rd</sup> parties, interference with the transmitted signal should be possible only with the consent of the respective service provider. Similarly a Member State considers it undesirable for commercial overlays to be imposed without the consent of stakeholders (i.e. suppliers of content and consumers). It is acceptable, however, for consumers themselves to be able to choose whether to apply a commercial overlay.

For another Member State, there should not be any commercial overlays without the consent of the service provider or right holder. If users have a technical means at their disposal to accept or refuse an advert or overlay, the final say should rest with them and the origin of these commercial communications should be clearly displayed. A Regulatory Authority underlines that it is up to the user to allow overlays on the screen where he is already watching an audiovisual media service and that innovative business models involving overlays should not be hampered if the user and the content provider have given their authorisation and if the regulation applicable to those overlays is close to the one applicable to advertising in audiovisual media services.

#### Other stakeholders:

Some stakeholders also make the difference between what is generated by 3<sup>rd</sup> parties, by the original content provider and by the user himself. Users should be in control when they want to combine the delivery of different services on their screens, e.g. social networks, forums, chats or Skype through scaling or parallel displaying. For some representatives of consumer electronics, an obligation to seek content provider consent would effectively mean prohibiting any flexible use of the content on the TV screen and this would disadvantage connected TVs as consumers would turn towards PCs, tablets etc.

#### ***Broadcasters/content providers should have the final say***

#### Member States and Regulatory Authorities:

According to other Member States authorities and Regulatory Authorities, the decision should predominantly and in priority remain with the broadcasters/content providers. A Regulatory Authority points out that it has established some guidelines, and the principle of editorial responsibility resting with the broadcaster underpins this process. There has not been any problem so far; so there is no reason to change the system. Another position is that, all commercial communications on the screen must remain the responsibility of the audiovisual media service editor. A Regulatory Authority argues that the editorial responsibility of hosting providers should be recognized in case of content promotion and associated advertising revenues. Another respondent suggests that overlays should have the consent of the concerned parties, when they can affect the integrity of works.

#### Other stakeholders:

Amongst other stakeholders there is the view that in case of commercial overlays from 3<sup>rd</sup> parties, no such advertising techniques should be allowed without the authorisation of the content provider.

Many stakeholders, mainly from the broadcasting sector are indeed of the opinion that content providers/broadcasters should have the final say over overlays. While many also mention the users as being able to control what they see, they do not think that a user authorisation should mean that their content can be freely overlaid.

In particular, an authorisation given by the user cannot justify unfair commercial practices by third parties, such as the overlay of commercial advertising on a broadcaster's programme (e.g. a service for free or at reduced price for users who allow overlays). This raises questions regarding the trust of viewers in their content and brand, but also the protection of creative work of people who are involved in the production of the programs. Overlays also raise risks for the distinction between editorial/commercial content.

Another argument is the investment in content that depends on advertising revenues. It is not only a problem of overlays but also of scaling, framing and pre-roll, mid-roll and post-roll advertising and all methods to "hijack" the broadcaster's audience for the commercial purposes of third parties. Some stakeholders support the EP resolution on Connected TV which calls on the Commission "to safeguard by law the integrity of linear and non-linear services on hybrid platforms and, in particular, to prohibit the overlay or scaling of these services by platform providers or third parties with content or other services ...". One respondent notes that Question 19 goes beyond commercial communications and commercial overlays; content integrity needs to be ensured not only for (primary) TV screens, but also for so-called second screens, which are synchronised with the TV picture.

### ***Producers/authors should have the final say***

#### Other stakeholders:

A few stakeholders also point to the role of the work producers/authors in having a say over whether or not commercial overlays should be accepted, especially where it is likely to affect the work's integrity. One stakeholder argues that service providers cannot impose commercial communications without obtaining the prior consent of right holders, because rights also cover commercial exploitation issues. Another respondent notes that, commercial overlays or other novel on-screen techniques should only be approved by those who have licensed the works and have a contractual relationship with (and hence a financial stake in) the creative chain.

### ***Regulatory intervention should occur***

#### Member States and Regulatory Authorities:

Some see the case for a regulatory intervention. For a Regulatory Authority, it would be useful for legislation to limit the format these advertising overlays could have (size, animation, sound) and to determine effective symbols (acoustic and/or visual) to warn viewers they are watching advertising. In any case, legislation should explicitly regulate commercial overlays and similar on-screen devices in such a way that viewers can freely choose whether they want them to appear or not. Another Regulatory Authority suggests that this task should be handled by the Group of Regulators and national regulatory bodies supporting the work of said Group.

#### Other stakeholders:

Also, some other stakeholders believe that there might be room for a regulatory intervention. That would mainly be the case when child protection/targeting minors or alcohol or tobacco advertising are concerned. According to one respondent, lawmakers should intervene after stakeholder consultation. Another stakeholder believes that, commercial inserts call for clear rules in the AVMSD. For an organisation with focus on viewers, the country of reception should have the authority to ban programmes which, surreptitiously or otherwise, include commercial communications of this nature, even though this contradicts the country of origin principle.

#### ***Regulatory intervention should NOT occur***

#### Other stakeholders:

Some respondents from the cable and advertising sector state that excessively prescriptive rules may stifle innovation and would restrict user autonomy.

Some stress that no regulation should be seriously considered which would allow a specific party to exclusively define whether and what kind of approach is regarded permissible and which would exclude that new business models are developed that could favour the interests of the viewer. In the latter case, the idea of mutual obligations to keep processes transparent might be taken into consideration. A respondent from the broadcasting sector notes that neither party in the value chain from content creation to content distribution must abuse its role to benefit from the content relayed through their networks, platforms or devices.

#### ***Other views***

#### Member States and Regulatory Authorities:

A Member State recognises that some innovative advertising techniques, such as visual elements appearing on the screen during broadcasting, put existing rules to the test. For another Member State, this should be seen together with the question of whether more stringent European advertising regulation is deemed necessary.

Self-regulatory procedures would be preferable, but with the involvement of regulatory authorities in order to ensure uniform assessments, according to another view.

#### Other stakeholders:

One stakeholder pleads strongly for fully equivalent treatment between traditional service providers on the one hand and OTTs on the other, as providers generally and largely respect the decision right of end-users with regard to commercial overlays, while by contrast OTT players' business models are built on revenues from advertising and they exploit this, very often without free choice of the end users.

Another respondent suggests that the very concept of the quantitative limit should be reconsidered and should not seek to encompass new forms of advertising techniques. Such limits will always clash with the constant evolution of these messages and the need to protect signal integrity.

## *Opinions on the Flemish "signal integrity" Decree*

### Other stakeholders:

The Flemish "signal integrity" Decree drew the attention of several stakeholders. Views are divided. Some consider that the decree restricts the principle of free movement of services and should be assessed with these general treaty provisions and the Transparency Directive. Others welcome and support the recent decree. It may be necessary to legislate to protect broadcaster's "signal integrity" and to ensure third party distributors are unable to manipulate the signal in any way (e.g. add advertisements) or add functionalities like ad-skipping without the prior consent of the broadcaster. A broadcaster representative considers that the protection of content (and signal) integrity also needs to become a legal obligation for digital intermediaries and content platform/gateway operators.

**QUESTION 20: ARE THE CURRENT RULES OF THE AVMSD APPROPRIATE TO ADDRESS THE CHALLENGES OF PROTECTING MINORS IN A CONVERGING MEDIA WORLD?**

*The current provisions are not appropriate*

Member States and Regulatory Authorities:

This view is expressed by several Member States authorities and Regulatory Authorities. Some note that a graduated approach is no longer justified in the context of protection of minors. The influence of linear and non-linear content on minors is considered as comparable. The current regulatory approach is still strongly characterised by a division based on the type of tool. It is argued that the asymmetries between linear and non-linear need to be reduced.

A revision of the AVMSD is proposed. The scope of the AVMSD should be extended to all non-linear services. The high level of protection in the linear area should be the basis.

Other stakeholders:

The view that current provisions would be inappropriate is shared by representatives of broadcasters, entities with a focus on citizens and various other organisations.

Some respondents call for a more harmonised approach or find the current rules appropriate for audiovisual media services, but insufficient for services outside the scope of the AVMSD.

Some entities who express doubts about the appropriateness of the AVSMD point to alternative approaches, e.g. more preventive measures, self-regulation or promotion of best practice.

While some argue that non-linear services do not need to uphold the same level of protection as linear services, others argue for uniform standards covering linear and non-linear.

*Extension of scope to non audiovisual media services*

Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities argue for an extension of regulation. This could imply one common regulatory framework for all cultural services, such as TV, VOD, computer games, universal regulation in the Internet environment to protect minors, minimum protection on all platforms and services or rules that cover not only audiovisual media services, but also other media content. The scope of the rules is considered to be too limited.

Others suggest more reflection on the establishment of minimum standards for digital content in European media or on social media.

Other stakeholders:

Some broadcasters suggest an extension of the rules to all platforms or to services outside the AMVSD, also Internet sites with services similar to audiovisual media services. There should be a study on the possibility of applying the principle of country of consumption to Internet content from outside the EU.

The Directive should be revised to address the consequences of the omnipresence of advertising on the Internet and forms of advertising that are especially problematic for young Internet users. Some stakeholders with a focus on the protection of minors point to user-generated content. Another respondent outlines ongoing redrafting of existing regulation to provide protection of minors against harmful content on all platforms for audiovisual content, including both linear and non-linear services as well as physical formats (DVD/Blu-ray) and public screenings (cinema).

One respondent suggests that this should be studied further, but cautions that regulation in the field of Internet is politically sensitive.

### ***The current provisions are appropriate / sufficient***

#### Member States and Regulatory Authorities:

This opinion is not frequently argued by Member States authorities and Regulatory Authorities.

#### Other stakeholders:

It is more widely found amongst other stakeholders, including some representatives of the advertising sector, network operators, broadcasters and related, cinema, film and TV producers/distributors/alia, digital and online sector, and entities with a focus on citizens, print and publishers. The latter also pointed out that the rules while still appropriate are decreasingly enforceable. One manufacturer stated that it is appropriate that the rules address the issue from a service, not a device point of view.

### ***Emphasis on non-legislative approaches, including self-regulation***

#### Member States and Regulatory Authorities:

One Member State does not comment as such on the AMVSD but notes that there should be a basic, common set of media standards, building on existing standards that already apply in many places. It explains that it has a strong programme of work in place to protect children on the Internet; and seeks a self-regulatory and industry-led approach, where possible. One Regulatory Authority advocates a mix of regulation, self- and co-regulation, industry-led initiatives. It proposed a new protection framework for televisions to create regulated "protected spaces" or "safe zones". (The existing broadcasting model of audience protection, which focuses on regulating editorially responsible service providers, is unlikely to translate to the online environment where the concept of editorial responsibility is more difficult to establish and, if established, may sit beyond national or EU borders.)

Other Member States authorities and Regulatory Authorities point to self – and co-regulatory systems, although the view can be found that they do not provide the same level of protection and legal certainty. One Member State points to positive cooperation between the learning and competences of children and adolescents on the one hand and the protection, promotion, and dialogue with content providers and operators on the other side.

Other stakeholders:

Self- and co-regulation is also advocated by several representatives of broadcasters, network operators, the digital sector or others.

Other respondents point to industry-led approaches or shared responsibility amongst ISPs, device manufacturers, content providers, service creators, governments, consumers and families. Satisfactory answers are considered to come from the broadcasters themselves.

***Other suggestions***

Member States and Regulatory Authorities:

It is also noted that protection measures should be taken at the level of the suppliers or that effective control can take place if there is a precise catalogue of technical safety measures that should be applied by service providers which prevent minors from accessing content that is harmful for their physical, psychological or moral development. Consideration should be given to clarifying the types of effective safeguards (their open list) as part of the second phase of regulation, i.e. implementation guidelines adopted by the reinforced Group of Regulators.

Parental responsibility and media literacy cannot be substituted by over-regulation.

More systematic information should be planned about content for viewers, including minors themselves, to protect minors in the Internet environment.

Other stakeholders:

When it comes to the role of regulators, some note that EU Member States should guarantee that all programmes are accompanied by a clear identification of regulatory responsibility.

Others suggest the exchange of best practice amongst regulatory bodies.

**QUESTION 21: ALTHOUGH BEING INCREASINGLY AVAILABLE ON DEVICES AND PLATFORMS USED TO ACCESS CONTENT, TAKE-UP OF PARENTAL CONTROL TOOLS APPEARS LIMITED SO FAR. WHICH MECHANISMS WOULD BE DESIRABLE TO MAKE PARENTS AWARE OF SUCH TOOLS?**

*Technical measures - Ease of use*

Member States and Regulatory Authorities:

Views amongst Member States authorities and Regulatory Authorities vary as to whether use of parental control tools is generally easy or not.

Other stakeholders:

The need for ease of use and affordability is also highlighted mainly by entities with focus on child protection.

*Technical measures – default settings*

Member States and Regulatory Authorities:

Respondents suggest integration in browsers and search engines or default activation, e.g. at the occasion of the first use.

Other stakeholders:

Similar suggestions are made by respondents from among broadcasters' entities with focus on viewers or child protection. The idea is voiced that changes to the defaults (which could also include turning off by default Peer2Peer access) should be linked to a robust age verification mechanisms which ensure that an adult is making the decision and to force regular updates and re-installations of controls along with software updates for example.

*Take-up and harmonisation across platforms*

Member States and Regulatory Authorities:

Another point frequently raised by Member States authorities and Regulatory Authorities relates to variations between devices and platforms which make it more difficult to promote tools. It is suggested to address simultaneous dissemination across multiple distribution platforms, to converge towards common techniques as far as possible, to require these also to be used for content outside the remit of the AMVSD and to have standardised terminology and activation mechanisms.

A Regulatory Authority suggests that the tools have to fulfil requirements: functionality, efficiency, handling and distribution (across all platforms). There should be a basic, common set of media standards, building on existing standards that already apply in many places.

Efforts should be stepped up under the umbrella of the "Safer Internet" programme to reach international standardization and interoperability in the technical protection of minors.

#### Other stakeholders:

One respondent points to consumer confusion, given the wide range of parental control solutions available, and the fact that no single solution provides complete protection across all services on all devices in all places (at home and on the move).

Some entities with a focus on the protection of minors also advocate standardisation. Others call for more customisation. It is also pointed out that the tools are less effective in social networking sites.

Parents might need to master and activate several different, but equally complicated systems, according to some. The result may then be that the systems are used only by the most conscientious of parents, where the need for protection may be limited. Some kind of standardisation (preferably through self-regulation) combined with awareness-raising activities could therefore prove helpful.

#### ***Education, awareness rising and information***

##### Member States and Regulatory Authorities:

Education and information are the appropriate mechanisms as a matter for both, the authorities and the companies.

Several Member States authorities and Regulatory Authorities highlight media literacy.

##### Other stakeholders:

Emphasis on media literacy is shared by other respondents including some organisations with a focus on consumer protection or child protection as well as broadcasters. An organisation with a focus on viewers proposes an EU certificate of audiovisual media literacy. One respondent specifically sees the need to have measures in this area rather than depending on filter systems. Others propose general educational measures or training of teachers.

##### Member States and Regulatory Authorities:

Some respondents note that there is a need for more information to be available on parental control tools and suggest awareness campaigns, including via mass media campaigns.

##### Other stakeholders:

Awareness rising is also advocated by some representatives of broadcasters, network operators and other entities; one respondent notes that availability of parental control tools is not the issue, but rather the ability and expertise required to be able to set up such tools. Another respondent states that campaigns on this issue should be more targeted. Some suggest that campaigns or provision of information should be conducted by public authorities, either by appropriate entities within Member States or specifically by regulatory authorities. There is also the suggestion that initiatives should be undertaken at EU level. The Commission should allocate funding for an awareness campaign. Another proposal is an extension of the European Safer Internet day to include full-sized advertisements in traditional media in conjunction with online advertisements to drive awareness, in order to increase take-up and demand for high quality parental controls.

Others point out that awareness cannot be mandated by legislative initiatives. Marketing campaigns developed by the private sector have proved more successful.

Several respondents point to information to be provided by providers, content aggregators and distribution platforms, ISPs and mobile phone operators or all players in the supply chain.

One respondent argues that making parents aware would be quite difficult and in most cases impossible.

### ***Industry-led approaches***

#### Member States and Regulatory Authorities:

Amongst respondents from the public sector there is the suggestion to agree self-regulatory codes of conduct with providers.

#### Other stakeholders:

Similar views are also advocated by industry representatives - leaving the adoption of models and schemes for this purpose to the market actors, to public-private partnerships or to those with editorial responsibility. Some respondents note that self-regulatory measures are faster, more flexible and more efficient. Market players should be free to invest in the most advanced technological solutions.

Others point out that the suppliers of operating systems and terminal devices are in a key position to build such features into their products. Standardisation could further facilitate the provision of parental control tools.

### ***Other issues***

#### Other stakeholders:

Another repeatedly noted issue is content classification and age ratings, often in conjunction with the blocking of payments. It is suggested that the European Commission could consider better age verification measures, including a personal digital certificate and ID.

Other suggestions relate to ensuring that adult programming is “unprominent” in listings/EPG which is considered to reduce the potential for minors to discover them accidentally. Another proposal are directories with easy reference which indicate to parents that access to certain content should be denied, and why.

It is suggested that new approaches should be explored to tackle services which fall outside of the AVMSD framework and that other players, notably content aggregators and technology companies should also commit as mature and responsible players.

Given the limitations of parental control software and other technical solutions which rely on action by parents, regulation of service providers offering harmful content is necessary, given the need to protect children from such content.

Another suggestion is that efficient filter systems must be made available in all European languages, which would justify a public intervention on the national or European scale. The reliability of these tools will require public oversight.

### ***More studies***

#### Member States and Regulatory Authorities:

It is seen as desirable for the Commission to examine the effectiveness of available tools and to mobilise research support to improve them.

#### Other stakeholders:

Further investigation and development must be undertaken to improve the effectiveness and customization (according to age and by users/family) of parental control tools.

### ***Reservation towards parental control tools***

#### Member States and Regulatory Authorities:

Amongst Member States authorities and Regulatory Authorities there were also doubts regarding parental control views, noting that parental control tools should not be seen as the priority in the efforts to protect minors; that they are not a panacea; and that no tool can replace the expertise of parents and relieve them of the responsibility. Both "over blocking" and "under blocking" are concerns.

#### Other stakeholders:

This is also the case for some entities focusing on the protection of minors. They note for example that they would not believe in the use of parental control tools to a large extent. One respondent notes that age classification of Internet content cannot be implemented in the same way as for films and other audiovisual works. A universal monitoring system for Internet content will not be effective, given the cultural diversity of Europe and the rapid development of online technologies and their use. Another comment mentions that technical solutions can create a false sense of security for parents. It is of paramount importance not to overestimate the effectiveness of monitoring and filtering software or consider them as the ultimate solution to child safety online.

It is also noted that older children know how to disable the parental control filters, as they know much more technically than their parents. Some parents take the conscious decision not to filter.

Some representatives of broadcasters point out that while those technologies can be useful in helping prevent children from accessing inappropriate material, they are not fail-safe and present new risks from unintentional blocking or third party censorship of legitimate content.

**QUESTION 22: WHAT MEASURES WOULD BE APPROPRIATE FOR THE EFFECTIVE AGE VERIFICATION OF USERS OF ONLINE AUDIOVISUAL CONTENT?**

*Technical security measures should be put in place by media service providers*

Member States and Regulatory Authorities:

For a number of Member States authorities and Regulatory Authorities effective verification should be done by way of technical security measures put in place by media service providers. A Regulatory Authority points out that at present, rather effective security measures include the use of PIN codes and payment by credit cards and bank transfers only. The PIN codes should be made available by the service provider after the assessment of the state of facts by the service provider, using methods to verify age such as sending a scan of an identity document or using a reliable database containing the date of birth of the person. A Member State notes that the concrete measures should be defined by the operators, and the competent authorities should supervise the effective use of them. Another respondent says that, according to its rules, television service providers must set up a system to ensure that the original parental access code is only given to users over 18. It is for the competent authorities to validate the procedure established by the supplier. In compliance with the rules on the protection of privacy, the most appropriate solution would be that any service provider communicates an access code to the user which would be validated either by signing an electronic identity card, or by sending a scanned version of the identity card.

Another respondent considers the following suitable mechanisms for verifying age: confirmation of credit card ownership or other form of payment where mandatory proof that the holder is 18 or over is required prior to issue; a reputable personal digital identity management service which uses checks on an independent and reliable database, such as the electoral roll; other comparable proof of account ownership which effectively verifies age. If age verification does not take place each time the user returns to the service, the service provider must control further access to hard core porn material by the use of mandatory security controls such as passwords or PIN numbers.

In one Member State an industry-led initiative is looking into two avenues: government attributes by working with the governmental Identity Assurance Programme and exploring the potential for age attributes for minors to be available in online payment channels. In another Member State the relevant body has developed key criteria which have to be met in a two-steps process: first, by an age verification via personal contact, "personal contact" means a face-to-face control procedure including a comparison with an official document of identification (ID card, passport); secondly by an authentication process with the individual user (e.g. password). According to another Member State, one possible approach for age verification is the use of digital signatures on mobile phones.

Finally, some respondents insist that a reference to the identification of the person is indispensable. One Regulatory Authority considers that the simple declaration of majority age is not sufficient; there is an urgent need for reliable age verification, coupled with credit card details or a digital passport.

### Other stakeholders:

Among broadcasters, similar positions can be found. One stakeholder considers the "timing" as an efficient method to protect minors, even for non-linear services. Another respondent from the broadcasting sector notes that an appropriate measure, in terms of R-18 content, is the use of the Content Access Control System required by the regulator that verifies that a user is over 18 at the point of access, supported by identification with a credit card or equivalent. Another broadcaster uses a parental lock which, when activated, stops any programme with a content label, ("G for Guidance") from being played on that device without a password. Users are shown a prompt screen inviting them to set up the lock the first time they try to play on-demand content with a content label, alongside other routine prompts such as a padlock indicating whether the lock is on or off. The respondent believes that approaches to content rating, classification and controls should focus on enabling understanding and choice, being in the first instance industry-led and informed by user expectations. Another respondent from the broadcasting sector highlights the importance of parental supervision. They also see some potential for electronic identification as a means to grant access: the use of the electronic identity card can possibly be used to grant access to certain content.

Another broadcaster points out that the age verification systems pose risks in terms of access to information: for example, preventing access to television news because of the risk of violent images. Another stakeholder underlines the need to ensure that the anonymous use of television and online services is basically guaranteed and that the Union's rules on the protection of privacy and personal data are fully respected. One broadcaster explains that for TV on-demand services, content which might seriously impair minors must be protected by use of a PIN code or similar. They also highlight the importance of the CEO Coalition.

A representative of network operators states that it is very difficult to be 100% certain that the person that is using the online service is not a minor. One possible solution could be access to the service by ID and PIN, after ID creation is confirmed by means of a disclaimer in which the date of birth is required; another solution could be asking for identification by means of a credit card. They believe that it is better to leave the industry to work on new solutions rather than establish further regulation on this issue.

A manufacturer notes that content providers are the best placed to develop these tools and to implement them directly with the recipient of the specific service delivered. If IP-based services bring new challenges to the protection of minors, they also offer more technical solutions that are not available for traditional broadcasting (e.g. parental control settings on apps).

## ***Age verification systems should be harmonised***

### Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities consider harmonisation in the systems to control access to adult content as important. According to a Regulatory Authority, it is necessary to know which harmonised, useful, evolving and effective system can be implemented in the Digital Single Market as a whole. Regulatory Authorities will play a vital role and coordination will have to be established between them and with the EC. Another Regulatory Authority argues that there is a great need for where possible, a uniform and standardised age verification method and reliable age verification, coupled with credit card details or a digital passport. A Member State comments that, even if it is left up to the parents to set up equipment, browsers or filters, the audiovisual sector can benefit from standards for electronic identification (eID) or even from an official digital passport that can be used across borders.

### Other stakeholders:

Some highlight the crucial importance of a comprehensive age classification system. One stakeholder with a focus on child protection thinks that, as with films and other audiovisual works delivered by VOD, age classification supplemented by a small explanation could be an appropriate advisory tool, and age verification is not a way forward. Another stakeholder with a focus on child protection argues that the availability of the reliable classification for audiovisual products is an absolute precondition for the functioning of such a system. Age verification can be either manual or automated. Manual age verification could for example consist of parents entering their children's ages themselves, making use of effective tools for parent control. In terms of automated verification, both the government and the commercial sector are currently thinking along the lines of solutions such as DigID/EID. Another stakeholder thinks that it is time to make contents ratings compulsory, with simple, clearly-explained criteria, so as to be truly useful for parents and adults who are responsible for children, as is the case for videogames with PEGI. As for pornography and very violent contents, which are available on download platforms, they should be locked and submitted to an obligatory ID control. Another stakeholder would appreciate if a European framework for self-regulation and self-classification would be created.

## ***Media literacy and parental control are crucial to integrate age verification measures***

### Member States and Regulatory Authorities:

Other respondents among Member States and Regulatory Authorities highlight the importance of media literacy and parents' responsibility. It is noted that current measures are not necessarily effective enough and technical control mechanisms will probably be complicated, expensive and ineffective. Access of minors to the content offered on the Internet is still mostly the responsibility of parents; their awareness, education and care do not rely solely on new control technology. A Regulatory Authority underlines that the best solutions are awareness campaigns and parents' control.

Another Regulatory Authority comments that in principle it is possible to achieve the objective of restricting children's access to unsuitable content on broadcast TV through a wide range of mechanisms (watershed, PIN codes, age-verifications tools, on-air warnings and EPG positioning). However, the effectiveness of these mechanisms relies not only on the nature of the mechanisms in question, but also on a combination of behaviours by both service providers and consumers.

#### Other stakeholders:

Some stakeholders underline that the verification measures should be made fully effective to prevent under-age use, this is the position of many entities with a focus on protection of minors. A respondent with a focus on child protection argues that, for example, the registration process instituted by many social media relies upon the professed age of the user, and in the absence of an effective age verification mechanism this enables easy circumvention. Among the safety issues that arise are concerns for children's privacy and their ability to consent to collection of personal data. According to another respondent with focus on child protection companies need to create effective mechanisms to check the age of users, e.g. by requiring parents to verify their age and not simply by agreement type "Yes I'm over 18 years old"; many times the parents themselves lie about the age of their children to have access to these services. In such cases, it is important to educate parents on the proper and ethical use of technology through information and awareness.

Other stakeholders including some representatives of network operators point out that a 100% effectiveness of age verification is not possible and some also highlight problems relating to data protection.

Although it might be possible to verify whether a person is over 18, it is very difficult to verify a specific age below this threshold, and would in fact carry its own risks as it would involve companies in collecting and retaining personal data from children.

Other stakeholders believe that no age verification system can provide for absolute safety for minors. The application of age verification systems that require the user to switch between mediums, i.e. to leave the online environment for being verified offline, should be avoided, while technical solutions that enable age verification while using the same media should be encouraged. A good example: German content providers can install on their websites software (a so-called "age file") which interacts with software for the protection of minors which parents can install on PCs used by their children. The software can read the age-file and then block certain websites, according to the age setting for the relevant website.

According to one stakeholder any specific system cannot provide for absolute safety and parents have the ultimate responsibility for deciding what is appropriate for their children.

#### ***Privacy issues arise in relation with age verification measures***

#### Other stakeholders:

Some of them underline that the verification measures should be made fully effective to prevent under-age use.

This is the position of entities with a focus on protection of minors. Among the safety issues that arise are concerns for children's privacy and their ability to consent to collection of personal data. According to another respondent, age verification for online content is a disproportionate approach, given for example that the development of effective age verification mechanisms faces serious challenges related to technical and data limitations. This is only compounded by the need to respect e-privacy and the difficulties this can present for ensuring that access to content is limited to users in the appropriate age group.

**QUESTION 23: SHOULD THE AVMSD BE MODIFIED TO ADDRESS, IN PARTICULAR, CONTENT RATING, CONTENT CLASSIFICATION AND PARENTAL CONTROL ACROSS TRANSMISSION CHANNELS?**

***Reluctance towards a modification of the AVMSD***

Member States and Regulatory Authorities:

Views against addressing these topics in the AVMSD are voiced by some Member States authorities and Regulatory Authorities. Some - including those less explicitly disagreeing with addressing the topic in the AVMSD - point to cultural differences and to a preference of addressing this issue at national level. Suggestions include minimum standards or improved convergence in the criteria used in the systems of symbols used as a guide to audiovisual content and age categories while still respecting and recognising each country's own particular social and cultural characteristics.

Another line of argument points to the desirability of addressing those measures at the level of service providers or voluntary as well as self- and co- regulatory approaches.

Other stakeholders:

Several respondents disagree with additional regulatory obligations in this area. This includes for example some broadcasters and network operators.

Some acknowledge that the AVMSD provides good basis, but details should be dealt with by Member States. Others point to the difficulties of a transnational approach or highlight cultural differences. For some this results in the conclusion that the matter be dealt with by Member States. One proposal is to explore the interoperability between different existing classification systems with industry working together on a voluntary basis to explore possible options, for example common age labels.

An organisation with a focus on viewers suggests that Member States develop a common set of (national) age divisions for classifying the programme. Another respondent comments that at the Member State level, national regulators should continue to monitor classification systems across different services and devices and to ensure they continue to meet audience expectations.

Member States and/or industry should address these issues, some only pointing to industry or service providers. European intervention should only encourage roll out of voluntary systems. Others see the role of policy makers overall in encouraging best practice.

Several responses highlight the role of self- and co-regulation. This includes representatives of broadcasters, manufacturers and network operators. Those approaches can deliver much more than regulation in protecting genuine public policy and safety goals, while being more future proof. One respondent pointed out that while a more harmonised classification of content and age-groups would facilitate cross-border content provision, there are a number of significant voluntary initiatives dealing with these matters.

Other suggestions are to focus on stricter advertising regulations and checks relating to them.

One respondent doubts that the amount of new material online would make it feasible to have labels, even those managed by users themselves. Another suggestion is to develop new devices (e.g. smartphone) with only functions/apps for kids.

### ***In favour of a modification of the AVMSD***

#### Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities support a modification of the AVMSD in this context, for example in view of increased transparency for the consumer.

A Regulatory Authority does not consider common rating schemes to be appropriate, but would support a change to the AVMSD which would require that service providers make available to users of the service sufficient information about each programme. This would enable the user to make an informed choice about whether to view the content or not.

#### Other stakeholders:

Amongst entities with a focus on consumers and child protection as well as private respondents there was also support for such a modification.

One entity with a focus on child protection highlights that the Directive should provide a level playing field and therefore covers all forms of transmissions. In the event that TV stations specifically target an audience within a country with their programmes e.g. by means of subtitling or using a foreign licence, they must conform to the rules for the protection of minors applicable in the country they are targeting (not being the country of origin).

Another proposal by a broadcaster related entity was that the Directive could go further by acknowledging that such parental controls should be taken into account when considering the level of consumer control over a linear service and the corresponding level of regulatory flexibility that is appropriate.

### ***Proposals for changes at EU level, but without indication through which instrument or proposals for further studies***

#### Other stakeholders:

It is suggested that more harmonised classification of content and age-groups would facilitate cross-border content provision.

Another respondent advocates public intervention on the national or European scale to ensure that efficient filter systems are available in all European languages. The need for application of tools in the whole range of audiovisual content is highlighted.

One respondent argues that European harmonization across transmission channels could alleviate problems related to circumvention of national regulation by offering services directly to consumers from abroad, resulting in competitive disadvantages for national actors.

Several contributors highlight the challenge of players from outside the AVMSD scope. They are not subject to the AVMSD rules, so that further rules would lead to a competitive disadvantage of EU players. A global approach is suggested, without specifying an instrument or non-legislative solutions.

### ***AVMSD: harmonization of content rating systems***

#### Member States and Regulatory Authorities:

The AVMSD should include a definition of the term minor.

While some respondents suggest the possible need for uniform and standardised age verification and that this should be addressed in AVMSD, and for example that the AVMSD should improve models to verify users' age, others explicitly state that this should not be included in the AVMSD.

#### Other stakeholders:

Further, some respondents generally advocate developing a common set of (national) age divisions for classifying the programme, compulsory ratings, the rolling out of age symbols to all audiovisual media service providers, plus monitoring and evaluation of age verification.

At the same time there is the view that EU standards on content/age rating are impossible.

### ***AVMSD: content classification***

#### Member States and Regulatory Authorities:

While some respondents suggest that this should be addressed in the AVMSD, others clearly object or note that rules at EU level on content classification are unrealistic.

One respondent endorses the approach recently announced by UK Government in its strategy document "Connectivity, Content and Consumers". It identifies hard core porn as a type of material from which under-18s need to be protected when using on-demand services. This approach could usefully be adopted as part of a revised AVMSD in order to address one of the challenges of protecting children.

#### Other stakeholders:

Regulation should be expanded by means of consistent classification, also online and offline. There is a need for a comprehensive legal framework for the classification of films and other audiovisual works. Content symbols could be rolled out to all audiovisual media service providers.

**QUESTION 24: SHOULD USERS BE BETTER INFORMED AND EMPOWERED AS TO WHERE AND HOW THEY CAN COMMENT OR COMPLAIN CONCERNING DIFFERENT TYPES OF CONTENT? ARE CURRENT COMPLAINTS HANDLING MECHANISMS APPROPRIATE?**

*The current system is appropriate and users are already informed about it*

Member States and Regulatory Authorities:

For a number of Member States authorities and Regulatory Authorities, users are already well informed and empowered as to where and how to comment and complain concerning different types of content. Some agree that current complaints handling mechanisms are appropriate. Moreover, a Member State notes that it is important to distinguish clearly between content that may be harmful to children and criminal activities on the Internet. On the one hand, complaints can also be submitted by individuals. On the other hand, Member States must also ensure that child pornography is removed from the Web or blocked. For another Member State, excessive rule making from the outside can lead to a restriction of editorial freedom, which is not justified and appropriate. According to a Regulatory Authority, citizen complaints are an important and constructive element in the protection of minors in the media.

Other stakeholders:

Generally, stakeholders are of the opinion that current mechanisms for complaints are appropriate. A network operator considers that users are generally well-informed about how to complain, given that most countries already have well-established complaints mechanisms for audiovisual media content. Many individual service providers will also have their own established mechanisms for complaints handling, such as "flagging" and "report abuse" buttons for specific items of content which may potentially cause offence. These are located within the body of the content making it easy for users to complain.

*The current system should be improved*

Member States and Regulatory Authorities:

Some Member States authorities and Regulatory Authorities think that the system should be improved. One Member State points out that the complaint mechanism is an important part of youth protection. There is a need for easily searchable, freely accessible and uniformly designed instruments on all platforms, as well as central and adequately equipped correspondents at national level (e.g. hotlines) with networking at EU level. A Regulatory Authority considers that the disparate procedures and competent authorities, depending on programme type, do not facilitate public understanding. An example is where the regulator received complaints about content related to audiovisual media services, whereas complaints relating to other programmes must be addressed to other bodies. Another Regulatory Authority thinks that for Internet services it is necessary to improve the mechanism. The service provider should have the main responsibility for informing the users and handling complaints.

Another observation is that a clear indication on the websites of service providers on the procedure for the submission of a complaint could increase the effectiveness of current mechanisms. At present such information is often difficult to find.

#### Other stakeholders:

An organisation with a focus on consumers highlights that current complaints-handling mechanisms are inappropriate and not consumer-friendly. Consumers should be better informed and empowered as to where and how they can comment and complaint concerning different types of content. Another respondent considers it vital for the effectiveness of a complaint that the public is informed about both the possibility to comment/complain and where to address it.

Some others argue that self-regulatory systems are particularly well-placed to integrate complaint mechanisms. For example, in Germany there is a very well-functioning complaint centre set up in the context of the self-regulatory "FSM" – "Freiwillige Selbstkontrolle Medien" system.

#### ***Examples of current efficient mechanisms for complaints and comments***

##### Member States and Regulatory Authorities:

In the UK, in 2011, after the "Bailey Review" which recommended regulators should work together to create a single website to act as an interface for parents, the website Parent Port was launched (the website was developed among the others by ATVOD, OFCOM, BBC, BBFC). The site makes the process of making a complaint easier by directing parents to the right regulator for their specific area of concern. One respondent pointed out that it should be clear to consumers how to complain or what action to take were they to see or hear content that is harmful for children. One model that seeks to provide such clarity is Parent Port. A Regulatory Authority points out that the EC should promote a European platform to protect users which must be able to present their complaints at a single place (one-stop box). Again, the example quoted is the UK's Parent Port.

##### Other stakeholders:

Concerning the examples of current efficient complaints handling mechanisms, NICAM has an extensive complaints procedure, which can also be used for other platforms and whose initial structure is well organised. NICAM also implements the complaints procedure for all complaints from Europe for PEGI, which also has an effective system for handling complaints.

Some respondents point to the Parent Port website. One suggests that it offers a best practice initiative for the EC to consider endorsing. The mission of the portal is to respond to queries and to redirect grievances and complaints by citizens to the competent authorities. A broadcaster notes that 96% of users would recommend Parent Port to others and 94% rated the ease of making a complaint to regulators as excellent, very good or good. Therefore, they do not consider that any further steps are necessary in the UK.

ZDF provides its users extensive opportunities available to comment on content, or to complain about it.

### *Other suggestions*

#### Other stakeholders:

Stakeholders made different suggestions. An entity with focus on child protection considers that the capacity to report distressing or inappropriate material to the Internet service or site provider, and to have such reports acted upon in a timely way, is a vital element of an effective self-regulatory system. In their submission to the CEO Coalition's working group tasked with the development of simple and robust reporting tools for users, they recommended making industry-provided reporting mechanisms more accessible and trusted. This should include clear, child-friendly communication about reporting tools and procedures, making them more prominent and accessible in all areas where they might be needed, not just on a "hidden corner" or very deep in the website's navigation, responding to and acting upon all reports of inappropriate content or behaviour expeditiously, making them open, making them available and easy to use by children and adults, ensuring that there are effective protocols and re-direct mechanisms in place.

**QUESTION 25: ARE THE MEANS BY WHICH COMPLAINTS ARE HANDLED (FUNDING, REGULATORY OR OTHER MEANS) APPROPRIATE TO PROVIDE ADEQUATE FEEDBACK FOLLOWING REPORTS ABOUT HARMFUL OR ILLEGAL CONTENT, IN PARTICULAR INVOLVING CHILDREN? WHAT SHOULD BE THE RESPECTIVE ROLES/RESPONSIBILITIES OF PUBLIC AUTHORITIES, NGO'S AND PROVIDERS OF PRODUCTS AND SERVICES IN MAKING SURE THAT ADEQUATE FEED-BACK IS PROPERLY DELIVERED TO PEOPLE REPORTING HARMFUL OR ILLEGAL CONTENT AND COMPLAINTS?**

*The current means are appropriate, but they would need to be developed further*

Member States and Regulatory Authorities:

For many of them, the means by which complaints are handled remain appropriate, but they would need to be further developed. A Member State points out that the cooperation between government authorities and other stakeholders, such as NGOs, should be guaranteed with adequate funding mechanisms. According to another Member State, the responsibilities of the individual complaint bodies should be clearly defined and secured. In addition, at national level, clearly competent hotlines and mediation centres should be established. Indeed, better integration and coordination of these bodies would be desirable in a converging media world. A Member State considers that handling complaints in an effective way would require stabilization and possibly resources made available by public and private sectors to be able to cope with the increasing number of complaints. It is essential to ensure that all European regulatory authorities have sufficient material and personnel. Therefore, a more pan-European network would be required.

Another Member State considers it important to improve and find more effective solutions. It also points to the need for reinforcement of the means made available by the various actors (public authorities, economic actors and NGOs). Other respondents argue that the current system appears suitable to handle properly the complaints on illegal or harmful content but it should consider the possibility of ensuring greater and more extensive information about the modalities and instruments for reporting complaints. It should be an obligation for service providers and NGOs to give adequate information on how users can complain. A Regulatory Authority considers that establishing a one-stop box for grievances and complaints regarding harmful content must be an institutional priority and an initiative of this nature must be cross-media, user-friendly and with sustained funding.

Other stakeholders:

Many other stakeholders share the same view. This includes some representatives of broadcasters, network operators and other entities. Moreover, a broadcaster argues that viewers must be informed and empowered to provide feedback and lodge complaints regarding content; so a comprehensive and viewer friendly system has to be established. Another one also notes the need for a well-established and transparent mechanism for acting on complaints. In addition, it took action across the media sector in its Member State of establishment to improve visibility of complaints processes. For illegal content

such as reporting of child abuse pictures, it believes that the Internet Watch Foundation plays a crucial role. Another respondent also affirms that in the UK the Internet Watch Foundation, entirely funded by industry, has had considerable success over many years having child abuse images taken down and providing data to law enforcement. An organisation with a focus on viewers points out that all regulatory bodies should be expected to provide adequate feedback to people reporting harmful or illegal content and complaints within a fixed period of time (e.g. 3 months).

Another respondent point out that the financial and legal protection of public complaint bodies is necessary in order to provide adequate feedback to complaints and to ensure appropriate times. In some countries the legal situation for non-governmental bodies dealing with harmful material is unclear. Legally clear legitimacy is necessary. Some stakeholders highlight the necessity of an intervention by the EC. In the opinion of one respondent, where there are dependencies, for example in the licensing of age-appropriate content, the EC should require companies to cooperate and impose appropriate sanctions against those who fail to comply. Another one adds that the processing and feedback system of complaints in the EU-wide INHOPE network is very efficient and effective. The national hotlines are very well linked with the ICT industry and even receive funding from ICT companies. Therefore, the EC should ensure the future public funding for INHOPE and national hotlines after the expiration of the Safer Internet Programme. Budget constraints should not threaten the important and independent work of these hotlines. The successful development of compliance offices for child abuse content and child endangering content should be continued in the future. Nonetheless, transparent information on the handling of reports should be easily accessible for the reporting user.

### ***The current means are appropriate and do not need to be developed further***

#### **Member States and Regulatory Authorities:**

Measures are appropriate and do not need to be developed further, according to some. An example is the Parent Port website which sets out what parents can expect from reporting complaints online. One respondent point out that in Germany the handling of complaints is carried out in a fixed way, according to constitutional rules, and citizens' complaints are an important and constructive element in the Youth Media Protection Inspectorate. A Regulatory Authority thinks that with regard to the complaints addressed to the public authorities, they strive to answer systematically. As for complaints directed to suppliers of services (audiovisual media or Internet sites) or associations, they are not currently monitored by public authorities. This issue could be efficiently addressed through consultation between providers and public authorities on the basis of self-and co-regulation.

### ***Other examples of means to handle complaints***

#### **Member States and Regulatory Authorities:**

One Member State notes that it is important to distinguish clearly between content that may be harmful to children and criminal activities on the Internet. It explains the system in this Member State where one organisation is responsible for classifying content.

In addition, the public prosecution service can issue a ruling, decision or order as part of a specific investigation in which it instructs an Internet service provider to delete unlawful content. The Member State's commercial sector and interest groups have cooperated with the Ministry of Economic Affairs to draw up a "Notice and Take-down" code of conduct. This specifies how individuals and companies in the online sector should deal with complaints about unlawful Internet content, for example child pornography, plagiarism, discrimination, and the supply of illegal items. When someone complains to an Internet service provider about possibly unlawful content, the provider must assess this "notice" in a uniform manner. If the content is unlawful, the provider must remove it, or "take it down". This procedure has been adopted by more than 90% of the market in this Member State.

Other stakeholders:

One entity with focus on minors, highlights that people can report anonymously to it, if they choose to do so. No personal data is recorded and therefore no feedback is provided. If they request feedback, the entity will inform the person of the outcome of their report and the follow-up of the process. As for the reports received from children, another respondent with focus on minors thinks that better handling of the reports, including the provision of adequate feedback is undoubtedly a step in the right direction. Another one recommends developing methods of assessing sites' and services' performance in dealing with reports. An effective and timely response and action system has to be set up by service providers and law enforcement agencies. Others report on the application of different systems. A representative of network operators notes that self-regulatory initiatives have been successful so far and that the current system is working effectively. It also points out that reporting and complaints mechanism will evolve over time. Thus, this is more a matter of culture and habit than of improving the reporting mechanisms.

**QUESTION 26: DO YOU THINK THAT ADDITIONAL STANDARDISATION EFFORTS ARE NEEDED IN THIS FIELD?**

*Additional standardization efforts are currently not needed*

Member States and public authorities:

A number of Member States authorities and Regulatory Authorities consider that additional standardisation efforts in the field of accessibility services are currently not needed. The technical means to deliver access services and the standards needed for implementation already exist.

Other stakeholders:

Also according to many other stakeholders, additional standardisation efforts are currently not needed. Market forces seem to be sufficient to promote the best innovative solutions. This includes many network operators, manufactures and broadcasters. Some organisations with focus on accessibility comment that the technical means to deliver access services and the standards needed for implementation already exist. The problem therefore is not gaps in standardisation, but one of fragmentation and lack of focus with regards to the technologies used. Proprietary implementation decisions further enlarge the problem.

*Additional standardisation initiatives needed*

Member States and public authorities:

Some Member States authorities and Regulatory Authorities welcome new standardisation initiatives.

Other stakeholders:

Mostly consumer groups and groups with a focus on accessibility share this view. Fields where standardisation is considered by them to be still required are connectivity and APIs. They claim that there is a need for standardisation in order to ensure accessibility solutions can be developed, using the connectivity provisions and that the protocols cover the required set of functions that such accessibility solutions must be able to access.

Secondly, there is an issue with content recognition and synchronisation technologies: Indeed, they argue that synchronization must allow the possibility to associate a specific programme with another media to make it accessible, for example a subtitle file, an audio-description file or a video file with sign language interpretation. A standardised synchronization solution will facilitate the exchange of assistive content, and will help develop an accessibility economy.

Thirdly, the quality of different access services and the format of subtitles, audio description, and spoken subtitles: Standardisation is necessary to make their use easier on different platforms and allow the possibility to activate them or not (closed services).

## ***Recommendations for the Commission***

### Member States and public authorities:

A Regulatory Authority argues that an agreement at EU level in order to improve media service access for people with vision or hearing disabilities would be welcomed.

### Other stakeholders:

A stakeholder from the broadcasting sector suggests that the Commission could convene discussions among stakeholders to see in how far the technologies developed in larger markets – whether at the platform or the content level – can be exported to smaller markets. For subtitling, sign language and audio description, there will be a need to develop the talent base in smaller languages. This could be explored with the assistance of EU funded programmes. Moreover, according to an organisation with a focus on consumers, the following technologies have been developed: automatic subtitling of videos and live events transmitted online, the development of mobile applications allowing subtitling and language selection, automatic generation of voices for audio description and automatic translation. Therefore, the focus should be on the widespread integration of these into digital services.

On the other hand, film producers would welcome public initiatives to promote and fund accessibility initiatives, including those seeking to identify cost effective methods of improving accessibility. Therefore, it is noted that there is a need for accompanying measures like mandated access to technical documentation for accessibility solution developers, and a need for backwards compatibility - i.e. the ability to function with input generated by an older product or technology. Furthermore, web-accessibility standards should continue to be developed. Finally they state that for the consumer's sake, European ICT standardisation must remain an open, transparent and a consensus-driven process, which allows all stakeholders to participate and to safeguard their interests.

As proposed by a viewer's association, the EU could have a role in establishing global discussions on standardisation that could both encourage investment in innovative services by EU programme producers, and simplify access by disabled and elderly viewers to audiovisual programmes as well as services coming from outside the EU.

## ***The problem is not lack of standardisation but relates to different issues***

### Member States and public authorities:

In the opinion of a number of Member States authorities and Regulatory Authorities, additional standardisation efforts are currently not needed. Indeed, market forces seem to be sufficient to promote the best innovative solutions. Therefore, the problem does not lie in the lack of standards, but rather in other difficulties. In particular, one Member State argues that the lack of implementation of these standards is the main problem. Also, differences between countries as regards accessibility requirements (also concerning audiovisual media services operating outside of the EU jurisdiction) are emphasised. Another Member State points out that they sometimes found it difficult to get non-linear broadcasting and video-on-demand services to comply. They operate from outside of the

Member State's and often EU jurisdiction and therefore do not have to comply with the Member State's or EU laws. Therefore, they recommend greater partnership working with industry across the EU and beyond to solve these problems.

A Regulatory Authority notes that the EU should harmonise its legal framework dealing with e-accessibility requirements of persons with disabilities in order to eliminate differences between the Member states of the EU. These have a significant impact on the implementation of Article 7 AVMSD and thus the right of persons with disabilities to information.

#### Other stakeholders:

According to many manufacturers, Internet service providers and some broadcasters, market forces seem to be sufficient to promote the best innovative solutions and self-regulatory measures, developed with the active support of consumer electronics companies. Those are more effective for the achievement of a high degree of barrier-free design than regulatory intervention. According to some network operators, further efforts to standardize might even impede technological evolution, and limit solutions to the lowest common denominator.

According to this group of respondents, the problem does not lie in the lack of standards, but rather in other issues, such as the non-implementation of standards. Devices have been capable of receiving and processing subtitles and audio description for many years. However, the transmission and provision of these services has been variable. In many instances these services are simply not made available, and when they are, they can be of variable quality. This results in a fragmentation of the market, raising the cost of compatible hardware where it exists. One respondent also underlines that choices made for the actual implementation of the standards (e.g. choice of specific profiles for Picture-in-Picture settings) are crucial. These choices should not constrain the development of new accessibility services, such as advanced subtitling services, voice-over services, avatar-based and traditional signing services. Adequate information and awareness-raising campaigns on the subject of "Accessibility" were also considered essential.

Secondly, a fragmentation and lack of focus in terms of the technologies used is highlighted. The recurring view is that there are simply too many competing components of a solution, which as a consequence leads to interoperability barriers. There is a need to agree on a much reduced, but focused set of technologies, deployed consistently across the EU. Thirdly, the existence of interoperability barriers is pointed out. As pointed out by numerous respondents one barrier to the provisioning of access services, especially on non-linear services, is the large number of different technical standards used in authoring, primary distribution to platform and final distribution to the end user. This means that a single piece of content may currently need to be provided in a large number of formats if it is to be made available with access services across all the platforms through which it is provided to consumers, thus creating costs which are prohibitive for many service providers in a nascent industry. They emphasise that where those who implement standards also make a selection of technologies, they should be compelled to provide access services across the end-to-end delivery chain, while content providers should be required to provide a reasonable level of such services alongside the main content.

In view of interoperability barriers, it is recommended that the Commission encourages

the development of pan-EU technical standards enabling access to services. Fourthly, the lack of accessible audiovisual content is considered as another challenge for the provision of barrier-free audiovisual media services. According to the respondents who raise this issue - mostly manufacturers, internet and network operators -, this problem will not be solved by standardisation efforts, but rather by legal obligation to have certain ratios of accessible programming in relation to the audience of the channel.

As pointed out by one digital association, new technologies offer a wide range of possibilities for increased accessibility, some of which are already being rolled out. It would be valuable if the European Commission ensures that best practices are shared and that restrictive IPRs on new technologies, in particular, patents do not serve as a barrier to the roll-out and usage. One broadcaster also suggests that the European Commission should request an in-depth study how European broadcasters and content producers could exploit the EU and international markets more successfully. Moreover, according to one broadcaster, provisioning is being made more difficult by server storage space, download speed, and the lack of unified standards between providers and operators.

In addition, some respondents mostly users and consumer groups, groups with a focus on accessibility and some broadcasters point to the need to ensure that any audio described content is compatible and therefore accessible in "on-demand" format. Programmes which initially contain descriptive audio are often no longer accompanied by the description track when made available on demand over the Internet at a later date. It is noted that VOD differs from broadcast television in ways which raise practical and technical difficulties and make standardisation of access services more difficult at this stage in the development of VOD services. One solution proposed is that broadcasters should be encouraged to at least ensure that if a service is distributed over the Internet, it should carry the same associated access services as those available over a broadcast channel.

Finally, some mention the differences between the obligations placed on broadcasters and OTT providers, since, as argued by network operators, new technologies and content platforms should also be required to comply with the principle of ensuring accessibility for people with disabilities. According to one digital association, policymakers should encourage converging solutions between different parts of the world, for instance US accessibility requirements for online video being consistent with the EU's practices. This will give the industry economies of scale and flexibility, while consumers benefit from solutions that work wherever they are or travel to.

## **QUESTION 27: WHAT INCENTIVES COULD BE OFFERED TO ENCOURAGE INVESTMENT IN INNOVATIVE SERVICES FOR PEOPLE WITH DISABILITIES?**

### ***Preliminary remarks***

As a preliminary remark, it needs to be noted that as pointed out by a Regulatory Authority and user organisations, accessibility services should no longer be seen as purely destined for people with disabilities. They are equally beneficial for and demanded by other groups of society, in particular the growing population of elderly people but not limited to the elderly. They are also very useful in environments, such as airports, bars, hospitals, where the sound is not low or cannot be used. They should also be seen as a pedagogical tool, in learning languages, in particular for minorities, thus contributing to their integration in society. Seen in this context, the potential market for accessibility services goes far beyond people with disabilities.

### ***Incentives can be offered both at European and national level***

#### Member States and Regulatory Authorities:

Several Member States authorities and Regulatory Authorities suggested incentives. At national level, indeed, they are of the opinion that accessibility issue with regard to audiovisual media services should involve active support by the government through subsidies, tax incentives and other measures of fiscal and economic character. This argument is further reinforced by the obligation placed on the Member States to implement the UN Convention on the rights of persons with disabilities. Support through budgetary measures is considered justified also in view of the high costs of accessibility services although there are also opinions that some services can be delivered via the web and funded by commercials and to some degree by sponsoring. Examples of good practice include improvements in accessibility services achieved in some countries due to government funds. However, as a general rule, investments in services for people with disabilities should always seek the most efficient solution in each situation.

#### Other stakeholders:

A number of other stakeholders focus on incentives that can be offered at an EU and national level. In particular, the European Commission is called by broadcasters to encourage further industry-led approaches to increase accessibility. Both groups with a focus on accessibility, and broadcasters point out that the EU could provide an incentive to encourage investment in innovative services for people with disabilities, by offering to co-finance deployment projects in this area. They suggest further that the European research agenda could incorporate areas where research, innovation and deployment projects with a focus on e-accessibility of online audiovisual works for persons with disabilities are still required and fund projects that would allow better accessibility for persons with disabilities. This would have to be implemented on a sufficiently large scale, with all stakeholders involved - including content creators and end users - and with sufficient geographical spread across the EU.

According to a viewers' association, the EU could have a role in establishing global discussions on standardisation that could both encourage investment in innovative services by EU programme producers, and would simplify access by disabled and elderly viewers to audiovisual programmes and services coming from outside the EU. The Commission should specifically include in a future Communication on State Aid for Public Service Media, the freedom for Member States to allow (within permitted State Aid) investment by those media service providers in innovative services for people with disabilities. This could also include tax incentives for firms and research institutes investing in the four areas outlined above.

### ***Examples of incentives at European level***

#### Member States and Regulatory Authorities:

The principle of co-financing public-private initiatives is strongly recommended, both for assistance to operators in the production of services tailored to vulnerable audiences and for material assistance to the latter in the context of the digital transition. In a number of cases this has already been successfully used.

#### Other stakeholders:

Respondents refer also to other concrete examples, such as the financial support mechanism within Creative Europe or through other interventions similar to Pilot Projects but tailored to the specific needs of the disabled. They also comment that European research programmes could contribute to research in this field, and European ICT innovation subsidies would encourage investment in innovative services.

### ***Examples of incentives at national level***

#### Member States and Regulatory Authorities:

Respondents mention a wide range of incentives that could be used by Member States. In particular, they suggest aid granted by the state in support of accessibility services, and aid provided to firms producing subtitles and other accessibility-related techniques (e.g. audio description). A Regulatory Authority also refers to subsidies for the acquisition of equipment, and the subscription of electronic communication services and content by persons with disabilities who have low income. In addition, another Regulatory Authority considers aid granted at the stage of content production, so that the task and related costs do not fall exclusively upon publishers; this encouragement can take many forms. Indeed, this could be the condition of the aid granted or constitute a guarantee to increase aid for projects that incorporate such measures. Finally, the possibility of co-financing of research and development for the evolution of accessibility services is pointed out.

#### Other stakeholders:

Other stakeholders suggest several incentives at national level, first a deduction to companies developing equipment, services and content specifically targeted at people with special needs.

Secondly, as broadcast of programmes accompanied by accessibility services does not generate revenues from advertising or generates very minimal revenues, it would be desirable to look for market entities willing to sponsor programmes offering accessibility services (e.g. manufacturers of medical and rehabilitation devices and equipment, providers of sanatorium services etc.).

Thirdly, granting special privileges (incentives) in the field of advertising or platform regulation in return for increased accessibility levels is suggested.

Fourthly, another incentive could be setting up an earmarked pool funded by a certain amount of revenue paid in the appropriate proportions by all the participants of the "value chain", i.e., operators, content distributors, producers and suppliers of terminal equipment. Indeed, the method of distributing the funds gathered in this way would have to be subjected to the rigours of EU regulations in the field of public aid. In addition, reducing the VAT on goods and services related to the provision of electronic media for people with disabilities is pointed out. Moreover, it is recommended to support integrating the obligation to ensure the availability of service to people with a visual or hearing impairment into the must-carry obligations imposed by the Member States upon operators. Any obligation to offer or carry audiovisual services for people with visual or hearing impairments should adhere to the principle of technology neutrality, and should apply equally to all content platforms (including OTT).

Finally, some stakeholders consider that the introduction of accessibility in engineering and technical training curricula (architects, designers, ICT professionals, etc.) could be used as an important measure to help build on growing interest in the development of accessible goods and services. It is also pointed out that Member States should support more innovative, accessible content production, promoting studies and market analysis, on the one hand, awakening producers for opportunities that derive from the possibility to reach out to new audiences, and, on the other hand, opening their horizon to support strategic decisions in choosing the accessible content.

### ***Flexibility in the market is needed to encourage investments***

#### Other stakeholders:

Respondents express the view that it is necessary to actively involve all stakeholders in every part of the value chain to promote accessibility and interoperability. Market stakeholders should be given more responsibility for developing accessibility tools, and innovate to meet customer needs. Only where the market does not provide a solution, should governments assess incentive schemes based on public funding through grants, tax breaks or similar measures. In the opinion of this group of respondents (mostly network operators, industry representatives and manufacturers), the best incentive to encourage investment in accessibility services is not to restrict the ability of platforms to innovate. Continued flexibility given to content producers and platforms should produce platforms which are accessible by as many users as possible and in innovative ways.

In this context stakeholders suggest creating a European forum where all stakeholders of the value chain could discuss and pave the way for better accessible converged audiovisual works under the supervision of the European Commission. Such a forum should have a clear mandate and clear timeline to deliver.

It should include European representative organisations of end-users and persons with disabilities, digital terminal equipment manufacturers, public and private broadcasters, television operators, national and European regulatory authorities and national policy-makers. The cooperation between EDF and Digital Europe is given as an example, illustrating how joint work can deliver concrete results (e.g. Text To Speech specifications).

### ***Harmonisation of legislation***

#### Member States and Regulatory Authorities:

Harmonisation of legislation, in particular strengthening of Article 7 AVMSD, is considered by some Regulatory Authorities as another important incentive to encourage investment in accessibility services. It is noted that it would create a level playing field and provide legal certainty to various industries working in the fast growing field of audiovisual media services. They could then exploit this certainty to provide the same accessible products and services in various EU Member States, rather than having to adapt their services and products to Member States' requirements.

Reinforcement of Article 7 AVMSD is also mentioned by many respondents as being necessary in order to encourage investment in innovative services.

#### Other stakeholders:

Several respondents - mostly user groups and groups with a focus on accessibility, but also industry associations - point to the necessity to harmonise legislation in general and to strengthen Article 7 in particular. According to groups with a focus on accessibility, harmonised accessibility requirements would encourage the industry to invest in accessibility. A pan-EU "level playing field" would facilitate economies of scale. For disabled customers, this would help to ensure they can enjoy accessible services regardless of the EU Member State they find themselves in. EU wide harmonisation would also be of particular benefit to disabled people in smaller EU Member States, as it would ensure that benefits of accessible technology were available only in larger Member States but also in the smaller ones.

However, according to these groups, harmonisation of legislation would act as an incentive only as long as the requirements being harmonised were sufficiently robust and broad in order to ensure the real accessibility of audiovisual media services. The active support of national regulatory authorities in Member States to implement the legal obligations arising from the AVMSD is also considered essential. Private broadcasters are of the opinion that mandated requirements should be more flexible for them, e.g. should be of voluntary/opt-in nature.

## *Other incentives*

### Other stakeholders:

With regard to other incentives mentioned by respondents, the availability of content is considered by manufacturers to be the key for the take-up of these services, and, as a consequence, these investments in innovative services are encouraged. The production of content by public service broadcasters would encourage wider adoption of accessible technologies by the market. In addition, a few respondents mentioned that a modification of the current copyright regime may also encourage investment in developing innovative services for people with disabilities. Adjustments for disabled people may interfere with rights of right holders with regard to a certain audiovisual work. Therefore a special authorisation right, granted by the right holder for third parties to adjust the content or develop applications only for the purposes of accessibility, should prove helpful.

A number of respondents also point to the need for ensuring information about access services through a preferred position in navigation systems and programme leaders, i.e. in terms of findability. A broadcaster mentions as an example an approach similar to Parent Port, used to inform members of the disabled community on a variety of issues, including: listing compatible devices and key services to inform consumer choice; or providing information on access services made by digital content providers (in addition to broadcasters).

## *Obstacles in on-demand services*

### Other stakeholders:

The respondents also point to the obstacles for introducing accessibility services in on-demand services. The reason is not so much of an economic nature, as stemming from the difficulties in transferring existing access services from broadcast to on-demand services. Similarly few respondents mention the need to secure sufficient spectrum resources to take full advantages offered by the HbbTV standard. Subtitling on new free digital channels is not merely an economic question but mainly a technological one: i.e. extra transmission capacity is needed to carry additional services such as subtitling. The same applies to HD linear pay TV channels. If the accessibility services were to be provided for free, there would be a need to secure spectrum required for these services. Otherwise a payment model via the Internet may be necessary.